35267-2-II





NO. 78624-3



IN THE SUPREME COURT OF THE STATE OF WASHINGTON

KITSAP COUNTY,

Appellant,

vs.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD, et al.,

Respondents.

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ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THURSTON COUNTY

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# APPELLANT'S OPENING BRIEF

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## I. INTRODUCTION

This case involves two decisions of the Central Puget Sound Growth Management Hearings Board (CPSGMHB or Hearings Board). *Bremerton et al. v. Kitsap County,* CPSGMHB No. 04-3-0009c, Final Decision & Order (FDO) (8/9/2004) (*Bremerton II*), AR Tab 75, and *1000 Friends of Washington v. Kitsap County,* CPSGMHB No. 04-3-0031c, Final Decision & Order (6/28/2005) (*1000 Friends*) Friends AR Tab 46.[1] The issues on appeal involve the prospective nature of GMA; sizing of urban growth areas (UGAs); the practical effect of vested pre-GMA parcels; deadlines for GMA mandates; the discretion local governments have under the GMA; and the role of the Hearings Board and its decisions.

## II. ASSIGNMENTS OF ERROR

1. The CPSGMHB erred in interpreting and applying RCW 36.70A.215, a GMA provision requiring certain counties to prepare a "buildable lands report" (BLR) to assess development.

2. The CPSGMHB erred in finding a purported "inconsistency" between the BLR and a Kitsap Countywide Planning Policy.

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[1] There are two administrative records (AR) in this consolidated case. Citations to the administrative record in *Bremerton II* are designated as "AR Tab __", citations to the administrative record in 1000 Friends are designated as "Friends AR Tab __". For the convenience of the Court, the indices to these records are attached as Appendix A.

3. The CPSGMHB erred in finding, based upon the purported inconsistency, that Kitsap County was required to adopt and implement reasonable measures no later than December 1, 2004.

4. The CPSGMHB erred by issuing an advisory opinion regarding reasonable measures because it suggested numerous other regulatory and planning mechanisms the County should consider adopting.

5. The Superior Court erred in reversing the CPSGMHB's decision, which found that Kitsap County complied with the GMA in identifying adopted and implemented reasonable measures.

6. The CPSGMHB erred in its interpretation of RCW 36.70A.130(3), holding that Kitsap County was required to complete a ten-year UGA update no later than December 1, 2004; and specifically by entering findings of fact and conclusions of law (FOF/COL)[2] as follow:

a. The Board's FOF/COL No. 1 is in error to the extent it implies the first ten-year UGA review must be completed ten years from 1994.

b. The Board's FOF/COL No. 3 is in error because it concludes Kitsap County was required to complete its ten-year UGA update no later than December 1, 2004.

c. The Board's FOF/COL No. 7 is in error because it states Kitsap County did not comply with the GMA by not meeting because it did not meet the December 1, 2004 deadline the Board had applied to the ten-year UGA update.

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[2] The Board did not distinguish between findings of fact and conclusions of law, and thus the County refers to them collectively as "FOF/COL."

d. The Board's FOF/COL No. 8 is in error because it concludes Kitsap County failed to meet the ten-year UGA update deadline, resulting in the Board's compliance order on this issue.

7. The CPSGMHB erred by issuing an advisory opinion regarding the deadline for the ten-year UGA update.

## III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the CPSGMHB err in interpreting RCW 36.70A.215(4) to include a requirement that a county adopt and implement reasonable measures to address development in the rural areas?

2. Did the CPSGMHB misinterpret the law by concluding that Kitsap County's Buildable Lands Report demonstrated an inconsistency as defined in RCW 36.70A.215(4), where the purported "inconsistency" was due to residential development on nonconforming rural lots that were created or vested prior to the enactment of GMA?

3. Did the CPSGMHB misapply the law to the facts by concluding that Kitsap County's 2002 Buildable Lands Report demonstrated an inconsistency as defined in RCW 36.70A.215(4), where the BLR measured baseline data during a period when the County's comprehensive plan had been invalidated by the Hearings Board and where the BLR shows that the average densities in county UGAs were just below the Hearings Board's "bright line rule" for urban densities?

4. Did the Superior Court err in reversing the CPSGMHB's decision on reasonable measures by not affording the proper deference to either the County or the CPSGMHB?

5. Did the Superior Court err in reversing the CPSGMHB's decision regarding reasonable measures by finding "clear and convincing" evidence in the record that such reasonable measures were not effective, where the only "evidence" consisted of conclusory argument?

6. Did the Superior Court err in reversing the CPSGMHB based on the reasoning that because the reasonable measures were not adopted "pursuant to" a BLR, they did not qualify as reasonable measures?

7. Did the CPSGMHB err in concluding the deadline for the ten-year UGA update is December 1, 2004, where the statute is silent on a deadline for the ten-year UGA update, but specifies the December 1, 2004 as a deadline for a different type of update, and when Kitsap County last reviewed its UGAs less than ten years prior to that date?

8. Did the CPSGMHB err in reviewing the legislative history of the GMA to conclude that December 1, 2004 is the deadline for the ten-year UGA update when the statute is clear on its face that it does not?

9. Did the CPSGMHB err in construing the GMA to include December 1, 2004 as the deadline for the ten-year UGA update, where it

ignored language that clearly referenced this deadline to a seven-year review and ignored differing deadlines for other counties?

10. Did the Hearings Board err in declaring December 1, 2004 as the deadline for Kitsap County's ten-year UGA review when it was not raised as an issue for review, nor briefed or argued, thus setting the stage for a subsequent appeal?

11. Did the CPSGMHB err in suggesting a number of other reasonable measures that Kitsap County should consider in the future, again setting the stage for a subsequent appeal if Kitsap County fails to implement the Hearings Board's suggestion, and potentially calling into question the CPSGMHB's neutrality in future appeals?

## IV. STATEMENT OF THE CASE

### *A. Kitsap County's GMA Planning History.*

Land use planning and zoning are governmental functions traditionally handled by local governments. In 1990, the state legislature enacted sweeping changes to local land use planning by adoption of the Growth Management Act. Chapter 36.70A RCW. For the first time in state

history, local governments were *required* to adopt comprehensive land use plans and accompanying regulations subject to statutory standards.[3]

Throughout the 1990s, the County struggled to comply with the new statute. Kitsap County adopted its first GMA comprehensive plan in December 1994. It was appealed to the CPSGMHB. In October 1995, the Hearings Board invalidated the County's comprehensive plan in its entirety, holding, *inter alia,* that Kitsap County had oversized it UGAs. *Bremerton v. Kitsap County,* CPSGMHB No. 95-3-0039c, FDO (10/6/1995) (hereafter "*Bremerton I*"). In 1996, Kitsap County adopted a substantially revised comprehensive plan, which included significantly smaller UGAs and new rural designations. Although noting improvement, the Hearings Board found the second plan noncompliant in September 1997, directing Kitsap County to "redesignate" its UGAs. *Port Gamble v. Kitsap County*, CPSGMHB No. 97-3-0024c, Finding of Noncompliance and Determination of Invalidity in *Bremerton* (9/8/1997)(hereafter "*Port Gamble*"). Finally, in 1998, the County adopted a third, completely revised, comprehensive plan. The UGAs were redesignated and reduced

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[3] Not all counties are subject to the requirements of the GMA, but most are. As of December 1992, counties planning under GMA included: Benton, Chelan, Clallam, Clark, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Island, Jefferson, King, Kitsap, Kittitas, Mason, Pacific, Pend Oreille, Pierce, San Juan, Skagit, Snohomish, Thurston, Walla Walla, Whatcom and Yakima. As of September 1993, Lewis, Spokane and Stevens were also planning under GMA. *See* Richard L. Settle & Charles G. Gavigan, *The Growth Management Revolution in Washington: Past, Present, and Future*, 16 UNIV. PUGET SOUND L. REV. 867, 872 n.24 (1993).

by over 50% in size. On February 9, 1999, the Hearings Board lifted its order of invalidity. *Alpine v. Kitsap County,* CPSGMHB No. 98-3-0032c, Order Rescinding Invalidity in *Bremerton* (2/8/1999) (hereafter "*Alpine*").

The GMA also requires counties to adopt Countywide Planning Policies (CPPs), which set a framework for city and county comprehensive plans. RCW 36.70A.210. The County collaborates with the cities in the CPP process, through which the County "allocates" the forecasted population into the UGAs. In 2001, Kitsap County adopted CPPs that set a noble goal of allocating 5/6 (83%) of the County's forecasted population into urban areas, with the remaining 1/6 (17%) into rural areas.[4] AR Tab 88 at 10.

In 2002, Kitsap County issued its first Buildable Lands Report (BLR) pursuant to RCW 36.70A.215. The BLR covered the years 1995 through 1999, largely the time the County did not have a GMA comprehensive plan in place. AR Tab 87, at 2. In 2003, Kitsap County focused its planning efforts on specific sub-areas that needed attention. AR Tab 93. In 2004, Kitsap County undertook its review and evaluation of its comprehensive plan pursuant to RCW 36.70A.130(1), the "seven-year

[4] The Court should note that while the County can set these aspirational goals, it cannot prohibit people from building on pre-existing lots in the rural areas. Nor can it force people to live in urban areas. It can only develop its land use plans as incentives to reach such goals.

review," and made some other minor comprehensive plan amendments. Friends AR Tab 1 (Ord. 326-2004). It continued its focus on smaller geographic areas through additional subarea planning. Also in 2004, it became apparent that it was unlikely the County could achieve the CPP goal allocating 5/6 of its growth into the urban areas. Moreover, the County was facing new petitions to the CPSGMHB because it had not been able to meet this goal. Thus, the County adjusted the goals downward to 76% of the total population allocated to urban areas in 2004.[5] Friends AR Tab 68 (Ord. 327-2004).

### ***B. Procedural History.***

*Bremerton II.* In 2004, the Suquamish Tribe, Kitsap Citizens for Responsible Planning (KCRP) and Harless (collectively the Tribe) sought review of Kitsap County's 2003 comprehensive plan amendments before the CPSGMHB. *Bremerton et al. v. Kitsap County et al.*, CPSGMHB No. 04-3-0009c (*Bremerton II*). AR Tabs 1, 2. The primary bases for the Tribe's appeals were claims that the County had erred in adopting subarea plans; and claims against the rural wooded incentive program.[6] Notably,

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[5] The Hearings Board characterized this change in CPP as the County's effort "to incorporate a planning target more closely approximating the existing pattern of rural sprawl." Friends AR 46 at 25, n.14. This was an unfair characterization. The new goal is more attainable and still meets the GMA provision of directing the majority of growth into urban areas.

[6] The rural wooded incentive program is not part of this appeal.

the issue of the County's ten-year review deadline was not raised by the parties.[7]

The Hearings Board concluded that the County's BLR showed inconsistencies between the County's land use goals and the growth that had actually occurred. The Hearings Board based its conclusion on the BLR's executive summary, which stated that, between 1995 and 1999, a slight majority of the residential development occurred in the rural area. Comparing this to the CPP goal directing 83% of future growth into urban areas, the CPSGMHB concluded "The BLR identifies development patterns inconsistent with the GMA, the County's CPPs and its Plan." CP 69. The Board further reasoned that the County was required to identify, adopt and implement reasonable measures to remedy this inconsistency. Nevertheless, the CPSGMHB held that a challenge to the failure to adopt reasonable measures was not ripe because the County had until December 1, 2004 to adopt reasonable measures. CP 70.

The Tribe requested reconsideration on a number of issues, including the CPSGMHB's decision regarding reasonable measures. AR Tab 76. It was not until the Hearings Board's order on reconsideration that the first mention of a ten-year UGA update deadline occurred. In its Order on

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[7] The only reference to the ten-year review was in Kitsap County's prehearing brief where it mentioned the fact that the ten-year review was due in 2008. AR Tab 54 at 31.

Reconsideration in *Bremerton II*, this Board issued a "Clarification" and stated: "The next periodic review, per RCW 36.70A.130, is required for Kitsap County by December 1, 2004." CP 91. Because this directive was issued on reconsideration, the County could not request further reconsideration. *See* WAC 242-02-832(3)("A board order on a motion for reconsideration is not subject to a motion for reconsideration.")

*1000 Friends.* The County's seven-year review was in progress when it received the *Bremerton II* decision requiring the County to adopt and implement reasonable measures no later than December 1, 2004. As part of its seven-year review, the County intended to supplement the BLR with a list of reasonable measures to be considered *if* inconsistencies were noted. Friends AR Tab 13, Ex. 26938.

Upon receipt of the *Bremerton II* order, the County undertook additional review of its existing land use policies and ordinances to identify reasonable measures that were implemented and adopted. The County formally identified these in Resolution 154-2004. Friends AR Tab 1 (Res. 154-2004). This action was appealed by KCRP and Jerry Harless, joined in by Futurewise (collectively Futurewise). Friends AR Tab 1. Harless separately appealed the County's failure to meet the newly imposed ten-year UGA update deadline. Friends AR Tab 2.

In its FDO issued in June 2005, the Hearings Board held that (1) Kitsap County had met its December 1, 2004 deadline for adopting and implementing reasonable measures; (2) petitioners had not met their burden to show that the County's reasonable measures were inadequate; (3) Kitsap County had failed to act because it had not completed its ten-year review by December 1, 2004; and (4) Kitsap County's actions were not invalid under the Act.[8] Friends AR Tab 46.

*Superior Court Process.* In October 2004, the County sought appellate review of the *Bremerton II* decision in Thurston County Superior Court. CP 5-98. The County appealed the Board's construction of RCW 36.70A.215 and its determination of the ten-year UGA update deadline. The Tribe appealed the other aspects of the *Bremerton II* decision, but later withdrew that appeal. CP 121-124.

In August 2005, Kitsap County filed a petition for review of the Hearings Board's order on the ten-year review in *1000 Friends*. County's Supplemental CP. Futurewise requested judicial review of the Hearings Board's ruling that the County's adoption and implementation of reasonable measures complied with the GMA. These cases were consolidated with the *Bremerton II* appeals that were pending in Thurston

[8] The Board also upheld that Kitsap County's designation of a Limited Area of More Intense Rural Development (LAMIRD). The LAMIRD issue is not before this court.

County Superior Court. CP 139-144.

Subsequently, the County moved the Hearings Board for extensions of the compliance dates set forth in its orders in *Bremerton II* and *1000 Friends*. Friends AR Tab 57. The County has begun the ten-year UGA update, and hopes to meet the new December 31, 2006 compliance deadline set by the Board. It has hired several consulting firms, at considerable cost to the County, in order to meet this deadline. Notwithstanding the new compliance deadline, Kitsap County remains subject to statutory penalties.

## V. SUMMARY OF ARGUMENT

Kitsap County's argument is broken down into five major sections. The first section addresses the proper standard of review and the proper level of deference to be given a County in GMA actions. The next two sections address RCW 36.70A.215, which pertains to the GMA buildable lands program and reasonable measures. In Section VI.B, Kitsap County explains that the CPSGMHB erred in its construction of this statutory provision. Based upon its misreading of the statute, the CPSGMHB committed another error by concluding that the County's BLR demonstrated an inconsistency that must be remedied. It further erred in requiring Kitsap County to adopt and implement reasonable measures, again based upon its erroneous interpretation of RCW 36.70A.215(4).

While Kitsap County appealed that ruling, it also took action to show compliance with the Board's order on reasonable measures. That action was again appealed to the CPSGMHB in *1000 Friends,* where the Hearings Board upheld Kitsap County's designation of adopted and implemented reasonable measures. The Superior Court, however, reversed the Board's decision on this issue. In section VI.C, Kitsap County challenges the Superior Court's reversal of the CPSGMHB decision. The Superior Court erred in finding evidence supported Futurewise's arguments, because the majority of their arguments consisted merely of unsubstantiated and conclusory arguments, with little or no citation to the record. The Superior Court also failed to provide the proper deference to the County and the Hearings Board.

Kitsap County also challenges the CPSGMHB's interpretation of a statutory deadline for the ten-year UGA update in RCW 36.70A.130(3). The Hearings Board held that a statutory deadline set for a different GMA process, to be conducted every seven years, also applied to the ten-year UGA update. The plain reading of the statute shows that this construction is in error, and that the Hearings Board failed to take into consideration the fact that Kitsap County last designated countywide UGAs in 1998.

Finally, Kitsap County asserts that the Hearings Board erred in both *Bremerton II* and *1000 Friends* by issuing advisory opinions, prohibited

under RCW 36.70A.290(1). In *Bremerton II,* the Hearings Board opined that Kitsap County was required to conduct its ten-year UGA update no later than December 1, 2004, a mere ten weeks away. This issue was not raised, briefed nor argued by any party. Moreover, the CPSGMHB opinion set the stage for another appeal once the County missed this newly imposed deadline. In *1000 Friends*, the Hearings Board upheld the County's action of identifying adopted reasonable measures. Yet, in response to petitioners' arguments that those reasonable measures were not adequate, the CPSGMHB made numerous "suggestions" regarding future reasonable measures the County should consider. This advice again sets the stage for future appeals if the county does not follow such advice. These decisions have placed the county in an endless cycle of GMA appeals, at extensive cost to the taxpayers of Kitsap County.

## VI. ARGUMENT

### *A. Standard Of Review*

The County's GMA actions are presumed valid upon adoption. RCW 36.70A.320(1). Before the Hearings Board, petitioners have the burden of proving that the County's actions were not in compliance with GMA. RCW 36.70A.320(2). If they do not meet that burden, the Hearings Board is required to uphold the County's action. RCW 36.70A.320(3) (the Hearings Board *shall* find compliance unless the county's action is clearly

erroneous in light of the entire record before it). GMA requires strong deference to local government's planning decisions. In addition to these provisions, the legislature took what the Supreme Court termed "the unusual additional step of enacting into law its statement of intent in amending RCW 36.70A.320 to accord counties and cities planning under the GMA additional deference." *Quadrant Corporation v. State Growth Management Hearings Board,* 154 Wn.2d 224, 237, 110 P.3d 1132 (2005). That enactment is RCW 36.70A.3201, which reads:

> In amending RCW 36.70A.320(3) ... *the legislature intends that the boards apply a more deferential standard of review* to actions of counties . . . than the preponderance of the evidence standard provided for under existing law. *In recognition of the broad range of discretion that may be exercised by counties . . .* consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to counties . . . in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties . . . to balance priorities and options for action *in full consideration of local circumstances*. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, *the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.*

RCW 36.70A.3201 (emphasis added).

While the Court's review is governed by the Administrative Procedures Act ("APA"), Chapter 34.05 RCW, deference to the local government continues during an APA appeal. In *Quadrant,* the Supreme

Court clarified the balance between the APA's deferential standard to an agency decision and the various GMA provisions providing deference to the County:

> In the face of this clear legislative directive, we now hold that deference to county planning actions, that are consistent with the goals and requirements of the GMA, supersedes deference granted by the APA and courts to administrative bodies in general.

*Quadrant,* 154 Wn.2d at 238 (internal citations and footnotes omitted). Kitsap County challenges the Hearings Board's actions under RCW 34.05.570(3)(d), i.e., that the Board erroneously interpreted and applied the law; and under RCW 34.05.570(3)(b) because portions of the Board's orders were outside its statutory authority. These are questions of law and are reviewed *de novo* by this Court. *Brown v. State of Washington,* 155 Wn.2d 254, 261, 119 P.3d 341 (2005).

The County challenges the Superior Court's reversal of the Board's order under RCW 34.05.570(3)(e), as its decision was not supported by substantial evidence in the record.[9] Here again, this Court reviews the CPSGMHB decision directly. "[S]ubstantial evidence is a sufficient quantity of evidence to persuade a fair-minded person of the truth or

[9] The Superior Court reversed the CPSGMHB based upon what it called "clear and convincing evidence" and stated it was "[e]mploying the standard of review prescribed in [*Quadrant*]." However, it did not specify the proper standard of review and this Court should apply the substantial evidence standard.

correctness of the order." *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.,* 136 Wn.2d 38, 46, 959 P.2d 1091 (1998). On mixed questions of law and fact, the Court determines the law independently, then applies it to the facts as found by the agency. *Thurston Cy v. Cooper Point Ass'n,* 148 Wn.2d 1, 8, 57 P.3d 1156 (2002).

Although normally the APA places the burden on the party challenging the Hearings Board's decisions, it does not change the presumption of validity under GMA.[10] *See* RCW 34.05.570(1)(a); *see also Quadrant Corporation v. State Growth Management Hearings Board,* 154 Wn.2d 224, 234, 110 P.3d 1132 (2005). In most cases, a court should accord deference to the agency interpretation of the law, but is not bound by the agency's interpretation. *Id* at 233.

Finally, the *Quadrant* court reiterated that the GMA is not a statute requiring liberal construction. *Quadrant,* 154 Wn.2d at 244, n.12 (*citing Skagit Surveyors and Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 565, 958 P.2d 962 (1998)). Thus, the Court should defer to the County when reviewing the County's action.

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[10] RCW 34.05.570(1) states that "[e]xcept to the extent that this chapter *or another statute provides otherwise* . . . the burden of demonstrating invalidity of agency action is on the party asserting invalidity." GMA is another statute providing otherwise under RCW 36.70A.320, 3201.

## ***B. GMA Overview***

The GMA requires counties and cities to comprehensively plan for new population growth over a twenty-year planning horizon. RCW 36.70A.110. A primary GMA provision requires counties to direct "urban growth" into "urban growth areas" (UGAs). RCW 36.70A.110. With some limited exceptions, those areas not designated as urban are considered "rural." In 1993 the Legislature set a July 1, 1994 deadline for the adoption of final UGAs. RCW 36.70A.040(3). The boundary of a UGA is determined through a fairly complex process.[11] First, the state Office of Financial Management (OFM) provides regular "population forecasts," which estimate population increases for a particular county. The county is then required to "allocate" a percentage of that forecasted population growth into the various UGAs, including the cities. But that is not the end of the process. In sizing a UGA, the county conducts a "land capacity analysis" in which it determines how much land need be included in each UGA.[12] In very basic terms, a land capacity applies the forecasted population and employment growth to the available land, at desired

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[11] By statute, each city is automatically included in a UGA, which encompasses the entire city limits, whether or not it displays urban or rural characteristics.

[12] The GMA requires that each county must ensure adequate land capacity for the forecasted population. RCW 36.70A.115. The requirements of doing a land capacity analysis and that the County must "show its work" on such an analysis are both "rules" set down in earlier Hearings Board decisions. The Hearings Board's authority to make such rules was rejected by the Supreme Court in *Viking Properties, Inc. v. Holm,* 155 Wn.2d 112, 129, 118 P.3d 211 (2005).

densities and deducting for unusable land, to arrive at the proper size of a UGA.[13]

Three regional Growth Management Hearings Boards hear and review challenges to county actions pursuant to GMA. RCW 36.70A.250. The Central Board reviews challenges to cities and counties located within Snohomish, King, Pierce and Kitsap Counties. RCW 36.70A.250(1)(b). In addition, the legislature directed the Department of Community, Trade, and Economic Development (CTED) to provide technical assistance to counties on GMA matters. RCW 36.70A.050, .190; *see also Quadrant,* 154 Wn.2d at 224.

The GMA has been extensively modified since its initial adoption. Through these amendments, GMA deadlines were often shifted or belatedly added. Much of the amending legislation has been piecemealed, resulting in inconsistencies and ambiguities. *See* Richard L. Settle, *Washington's Growth Management Revolution Goes to Court*, 23 SEATTLE U.L. REV. 5, 8 (1999)(""[T]he Act [was] riddled with politically necessary omission, internal inconsistencies and vague language.") The GMA standards are quite complex and constantly changing. And the

[13] The GMA includes many other requirements, but for the purposes of this brief, we focus only on the requirements applicable to the issues in this appeal.

GMA has continued to increase in complexity through new provisions and deadlines, as well as new conditions and interpretations imposed by the Hearings Boards.

When initially adopted in 1990, the GMA required counties to adopt comprehensive plans by July 1, 1993 and implementing development regulations by July 1, 1994. 1990 Wash. Laws Ch. 17. The deadlines were later statutorily extended. 1991 Wash. Laws Ch. 32. The initial Act provided for continuing review and evaluation of comprehensive plans and included a general requirement that UGAs must be reviewed at least every ten years. RCW 36.70A.130(1), (3).

In 1997, several significant amendments and new requirements were added to the GMA. The provision requiring continuing review and evaluation of comprehensive plans, RCW 36.70A.130(1), was amended to require a comprehensive plan review every five years. The initial deadline was September 1, 2002. Also in 1997, RCW 36.70A.215 was added. This new statutory provision required certain counties, including Kitsap County, to prepare a "Buildable Lands Report" (BLR) every five years, beginning in September 2002. A BLR "looks back" at the growth that occurred over the previous five years, and is used to determine whether a county is achieving urban densities within its urban growth areas. RCW 36.70A.215(1)(a). The BLR should also identify "reasonable measures,"

that will be taken if the report demonstrates inconsistencies between what has occurred and what was envisioned in the County's GMA policies. *Id.*[14] Finally, the 1997 Legislature changed the Hearings Boards' standard of review from a preponderance of the evidence to a clearly erroneous standard. In addition, the Legislature codified direction to the Hearings Boards to apply a more deferential standard of review in considering challenges to county comprehensive plans and development regulations.

In 2002, RCW 36.70A.130(1), the provision requiring periodic reviews of a county's comprehensive plan, was yet again amended by the Legislature. 2002 Wash. Laws Ch. 320. The schedule for review under RCW 36.70A.130(1) was changed from every five years to every seven years. The amendment also directed counties to review population allocations during this seven-year review. Along with that change, a new subsection was added setting forth initial deadlines for meeting the seven-year requirement, RCW 36.70A.130(4). Subsection (4) set forth a series of deadlines for the counties throughout the state. Kitsap County was subject to the first deadline in this section, December 1, 2004. Further, RCW 36.70A.130(2) was also amended in 2002 to include cross-references between RCW 36.70A.130(1) and RCW 36.70A.130(4). No

[14] This is a summary of the statutory provisions. As will be shown below, "reasonable measures" must be implemented only if an inconsistency is found that relates to specific evaluation factors, *i.e.*, an analysis of the urban area. RCW 36.70A.215(3), (4).

change was made to RCW 36.70A.130(3), the provision regarding the ten-year UGA review at issue here.

In 2005, the legislature made more changes to RCW 36.70A.130, allowing an additional year for compliance with the seven-year review before sanctions applied. *See* 2005 Wash. Laws Ch. 294. The 2005 amendments were neither in effect at the time the Hearings Board ruled in either case, nor do they affect the consequences of the Board's ruling, except that the potential sanctions applicable to Kitsap County were deferred until December 1, 2005.

In summary, the relevant provisions of GMA that pertain to the County's issues on appeal to this court are as follows:

- RCW 36.70A.215 requires that certain counties prepare a Buildable Land Report looking back at development that has occurred. The first BLR was due in September 2002, and succeeding BLRs are due every five years thereafter;

- RCW 36.70A.215(3) sets out the minimum criteria that must be evaluated in a BLR, all of which pertain to UGA capacity and urban residential densities;

- RCW 36.70A.215(4) requires a county to adopt and implement reasonable measures if the BLR demonstrates an inconsistency "as the inconsistency relates to the evaluation factors set forth in [RCW 36.70A.215(3)]";

- RCW 36.70A.130(3) states that a county must review its UGAs and urban densities at least every ten years, but provides no starting date or deadline;

- RCW 36.70A.130(1) requires a county to review and revise, if necessary, its comprehensive plan, development regulations and population allocations every seven years in accordance with the schedule set forth in RCW 36.70A.130(4);

- RCW 36.70A.130(4) sets a staggered series of deadlines for the various counties in meeting RCW 36.70A.130(1), and provides for additional reviews every seven years thereafter;

- RCW 36.70A.290(1) prohibits the Hearings Board from issuing "advisory opinions on issues not presented to the board in the statement of issues, as modified by any prehearing order."

### C. ***The Buildable Lands Program Addresses Urban Growth Area Capacity – It Does Not Pertain to Rural Areas***

*The Hearings Board Erred in its Interpretation of RCW 36.70A.215.*

RCW 36.70A.215 requires six western Washington counties, and the cities within those counties, to prepare what is commonly termed a "buildable lands report" (BLR). A BLR is used to assess whether urban densities are being achieved within the UGAs. It measures the availability of net buildable lands within the UGA, after deducting for land that is unbuildable. The County's first buildable lands report was due on September 1, 2002. Kitsap County's BLR covered development in the years 1995 through 1999. AR Tab 87. The County's BLR was not challenged. It showed that Kitsap County was approaching the Hearings Board's acceptable urban densities, an average of 3.89 dwelling unit per acre (dua) in the UGAs. AR Tab 87.

In *Bremerton II*, the Hearings Board held Kitsap County's BLR revealed inconsistencies between the development that had occurred and the CPP goal directing 5/6 of new population growth into UGAs. CP 69. The CPSGMHB concluded an inconsistency existed because the BLR showed Kitsap County's residential development was slightly higher in the rural areas than the urban areas. CP 69. The Hearings Board held that the County was required to implement reasonable measures to remedy this "inconsistency" no later than December 1, 2004. CP 70. The Board erred in its construction of RCW 36.70A.215, and subsequently erred in its conclusions that (1) an inconsistency existed; that (2) required the adoption and implementation of reasonable measures.

*The BLR and Reasonable Measures Concern Only Urban Areas.* The Hearings Board's finding that an inconsistency exists is based upon a misreading of the statute.[15] The first four subsections of RCW 36.70A.215 set forth the requirements for a buildable lands program. Subsection (1) sets forth the *purpose* of the program; subsection (2) discusses the data gathering and dispute resolution *process*; subsection (3) contains the *evaluation* criteria; and subsection (4) discusses *requirements*

[15] In Superior Court, Futurewise argued that the inconsistency was not solely based upon too much growth in the rural area, but also because the County was not meeting urban densities. The Hearings Board's decision in *Bremerton II,* however, only addresses the population targets for the urban areas vis-à-vis data for rural areas; it does not mention urban densities.

*if an inconsistency is demonstrated.* In relevant part, RCW 36.70A.215 reads:

> (1) Subject to the limitations in subsection (7) of this section, a county shall adopt, in consultation with its cities, county-wide planning policies to establish a review and evaluation program. This program shall be in addition to the requirements of RCW 36.70A.110, 36.70A.130, and 36.70A.210. In developing and implementing the review and evaluation program required by this section, the county and its cities shall consider information from other appropriate jurisdictions and sources. The ***purpose*** of the review and evaluation program shall be to:
>
> > (a) ***Determine whether a county and its cities are achieving urban densities within urban growth areas*** by comparing growth and development assumptions, targets, and objectives contained in the county-wide planning policies and the county and city comprehensive plans with actual growth and development that has occurred in the county and its cities; and
> >
> > (b) ***Identify reasonable measures, other than adjusting urban growth areas***, that will be taken to comply with the requirements of this chapter.
>
> (2) The review and evaluation program shall:
>
> > (a) Encompass land uses and activities both within and outside of urban growth areas and provide for annual collection of data on urban and rural land uses, development, critical areas, and capital facilities ***to the extent necessary to determine the quantity and type of land suitable for development***, both for residential and employment-based activities;
> >
> > (b) ***Provide for evaluation*** of the data collected under (a) of this subsection every five years a***s provided in subsection (3)*** of this section. The first evaluation shall be completed not later than September 1, 2002. The county and its cities ***may*** establish in the county-wide planning policies

indicators, benchmarks, and other similar criteria to use in conducting the evaluation;

(c) Provide for methods to resolve disputes among jurisdictions relating to the county-wide planning policies required by this section and procedures to resolve inconsistencies in collection and analysis of data; and

(d) Provide for the amendment of the county-wide policies and county and city comprehensive plans as needed to remedy an inconsistency identified through the evaluation required by this section, or to bring these policies into compliance with the requirements of this chapter.

(3) At a minimum, the ***evaluation component*** of the program required by subsection (1) of this section shall:

(a) Determine whether there is sufficient suitable land ***to accommodate the county-wide population projection*** established for the county pursuant to RCW 43.62.035 and the subsequent population allocations within the county and between the county and its cities and the requirements of RCW 36.70A.110;

(b) Determine the actual density of housing that has been constructed and the actual amount of land developed for commercial and industrial uses ***within the urban growth area*** since the adoption of a comprehensive plan under this chapter or since the last periodic evaluation as required by subsection (1) of this section; and

(c) Based on the actual density of development ***as determined under (b)*** of this subsection, review commercial, industrial, and housing needs by type and density range to determine the amount of land needed for commercial, industrial, and housing for the remaining portion of the twenty-year planning period used in the most recently adopted comprehensive plan.

(4) ***If the evaluation required by subsection (3) of this section demonstrates an inconsistency*** between what has occurred

> since the adoption of the county-wide planning policies and the county and city comprehensive plans and development regulations and what was envisioned in those policies and plans and the planning goals and the requirements of this chapter, ***as the inconsistency relates to the evaluation factors specified in subsection (3) of this section, the county and its cities shall adopt and implement measures that are reasonably likely to increase consistency*** during the subsequent five-year period. If necessary, a county, in consultation with its cities as required by RCW 36.70A.210, shall adopt amendments to county-wide planning policies to increase consistency. The county and its cities shall annually monitor the measures adopted under this subsection to determine their effect and may revise or rescind them as appropriate. (emphasis added).

The language of the statute shows that reasonable measures are only required when an inconsistency *related to urban growth area capacity* is demonstrated. Under subsection (4), a county is required to adopt and implement measures that are reasonably likely to increase consistency during the subsequent five-year period, where "*the inconsistency relates to the evaluation factors specified in subsection (3)*[.]" Thus, reasonable measures are *only* required if an inconsistency is shown that relates to the evaluation criteria of subsection (3), all of which pertain to urban areas.

Subsection (3) sets forth the requisites for the evaluation program. RCW 36.70A.215(3)(a) first requires a determination whether there is sufficient land to accommodate the subsequent twenty year population growth "within the county and its cities and the requirements of RCW 36.70A.110." RCW 36.70A.110 is the GMA provision that addresses

UGAs. The County only allocates population into the UGAs, it does not allocate population into the rural areas. *Clark County Natural Resource Council v. Clark County Citizens United, Inc.*, 94 Wn. App. 670, 676, 972 P.2d 941, *rev. denied* 139 Wn.2d.2d 1002 (1999) ("[N]othing in the GMA provides that a county must use OFM's population projections as a cap or ceiling when planning for non-urban growth. . . ."). Thus RCW 36.70A.215(3)(a) addresses *only* the urban growth areas.

RCW 36.70A.215(3)(b) is more explicit – it requires a determination of the actual construction of housing and development of lands for commercial and industrial use "*within the urban growth area.*" It does not require an evaluation of the rural areas. Finally, RCW 36.70A.215(3)(c) states that based upon the actual development and densities "*as determined under (b) of this subsection,*" that is, *within the UGAs,* the county should determine whether there is sufficient land for the remaining portion of the twenty-year period.

Subsection (4) refers to inconsistencies relating to the evaluation factors of subsection (3). Since the subsection (3) evaluation factors *only* address evaluation of the UGAs, only those "inconsistencies" related to UGAs require the adoption of reasonable measures. Conversely, an inconsistency related to rural areas does not require the adoption of reasonable measures. Thus, under the plain language of the statute, the

county is only required to implement reasonable measures to address an inconsistency that relates to the evaluation factors in subsection (3), which are inconsistencies within the UGAs.

Futurewise argued that because subsection (2) refers to collecting data in the rural areas, the evaluation of inconsistencies necessarily includes the rural areas. CP 337. But that is not what the statute says. Subsection (2) sets forth the *process* for the BLR, including how and where data should be collected and how disputes among jurisdictions should be resolved. But Subsection (3) is the essence of the *evaluation* required under a BLR. This provision deals solely with densities and growth *within the urban growth areas*. The mere fact that subsection (2) requires data collection in the rural areas does not transform the other statutory provisions to require evaluation and address issues in the rural areas. Instead, the language clearly states that the purpose, evaluation and remedies of the BLR address only the urban areas.

The fact that a county is precluded from adjusting urban growth boundaries prior to implementing reasonable measures underscores the purpose and nature of such reasonable measures: to ensure that adequate densities are being met *within the urban growth areas.* The statute deals solely with development within the UGAs – it does not require a review of the entire comprehensive plan, countywide planning policies and the

development regulations. If it did, it would duplicate RCW 36.70A.130(1) and (3). Such an interpretation would also require a complete review every five years (RCW 36.70A.215); every seven years (RCW 36.70A.130(1)) and every ten years (RCW 36.70A.130(3)).

In an earlier decision, the CPSGMHB recognized that a BLR is to focus on the statutory components set forth above. *Hensley and 1000 Friends of Washington v. Snohomish County, et al.,* CPSGMHB No. 03-3-0009c, Final Decision & Order at 12 (9/22/03). There, the Hearings Board stated:

> The review and evaluation program is designed to require the assessment of at least the three most significant consumers of *urban land* – residential, commercial and industrial uses. These three use types provide the core of *urban development* and the basis for the possible expansion of UGAs.

*Id.* (emphasis added). In Kitsap County's case, however, the CPSGMHB focused on growth in the *rural* area. CP 69. The Hearings Board erred in its interpretation that Kitsap County's BLR demonstrated inconsistencies because it focused on the rural areas. Under the plain terms of the statute, RCW 36.70A.215(4) directs counties to look for inconsistencies under the evaluation criteria of RCW 36.70A.215(3)("*as the inconsistency relates to the evaluation factors specified in subsection(3)*"), which is evaluation of the urban areas, not the rural areas. The determination at the heart of a BLR is singular: whether the County's comprehensive plan and

implementing regulations are working *to achieve urban densities within the County's UGAs*. Kitsap County's BLR shows that it is achieving urban densities, thus, there is no reason for it to adopt and implement reasonable measures.

*The BLR Actually Demonstrates that the County is Generally Achieving Urban Densities in its UGAs*. The Kitsap County BLR demonstrates that the answer to the fundamental statutory inquiry in RCW 36.70A.215(1)(a) is "yes, Kitsap County is achieving urban densities within its UGAs." In 2003, CTED issued a report on various buildable lands programs throughout the state, which provides a helpful overview (CTED Report). AR Tab 54, App. IR 24168. The report notes that at the end of 1999, Kitsap County's average urban density was 3.89 units per acre. *Id.* at 8. This density of 3.89 units per acres was just slightly short of the CPSGMHB's "bright line" urban density of 4 units per acre. It is a sign that the County is on the right track.

The CTED report shows that the County's achieved densities are lower than those of Clark (6 units/acre), King (7.3 units/acre) and Snohomish (8.89 units/acre) Counties, higher than those in Thurston County (3.59 units/acre), and just below those in Pierce County (4.02 units/acre). *Id* at 1. As explained above, RCW 36.70A.215(4) requires the determination of possible inconsistencies to be based upon the evaluation criteria under

RCW 36.70A.215(3), which only address the urban areas. Kitsap County's BLR showed that the County was very close to reaching the "bright line" urban density, and therefore there were no inconsistencies. Moreover, the Hearings Board's "bright line minimum density" has been rejected question by the Supreme Court in *Viking Properties, Inc. v. Holm,* 155 Wn.2d 112, 118 P.3d 322 (2005). In *Bremerton I,* the CPSGMHB set a "bright line" of 4 dwelling units per acre as a minimum urban density. The Hearings Board's authority to set a "bright line rule" was rejected by the Washington State Supreme Court in *Viking,* 115 Wn.2d at 129. The *Viking* court stating that "GMA creates a general 'framework' to guide local jurisdictions instead of 'bright line' rules." *Id.* Thus, the CPSGMHB erred in concluding that the BLR showed an inconsistency because it showed Kitsap County is meeting acceptable urban densities.

*Kitsap County's BLR Provides Baseline Data Only.* As noted, Kitsap County struggled with GMA compliance most of the 1990's. The Hearings Board, however, would not consider this fact as far as the BLR's value in measuring the effectiveness of the County's comprehensive plan.

Kitsap County's first GMA comprehensive plan and regulations were invalidated between 1995 and 1999. In both cases, the Board invalidated the land use elements and the UGAs established in the County's plans.

Finally, the County adopted a third GMA comprehensive plan, and, on February 8, 1999, the Board lifted its order of invalidity.

In preparing its BLR, the County's consultant reviewed permit information between 1995 and the end of 1999. AR Tab 87 at 2. ("This report is . . . a snap-shot in time -- shows development densities and land supply on through 1999"). Kitsap County did not have a GMA compliant comprehensive plan or UGAs in effect for most of the five years of data evaluated in the County's BLR. The vast majority of the data compiled in the BLR (permit data from 1995 through February 8, 1999, or over 4 years of the 5 years of data) is therefore completely irrelevant to a determination of the effectiveness of the County's GMA comprehensive plan.

The BLR should have been used solely as baseline data for future reports. This fact was acknowledged in the CTED Report: "The first Evaluation Report creates a benchmark to measure future reports and the progress being made in achieving the goals of comprehensive plans." AR Tab 54 App. IR 24168 at 12. This fact was also acknowledged by Kitsap County in the BLR: "It became clear that the Buildable Lands Analysis is more of a starting point than an end, and that with newly available data, much additional study is now possible." AR Tab at 87 Once a second BLR is completed in 2007, the County will have a better indication of what has been occurring under valid GMA actions.

When the Board issues an order of invalidity, as it did for Kitsap County's early plans, new development applications will not vest. *See* RCW 36.70A.302(3). However, an order of invalidity will not affect development proposals that vested *prior* to the issuance of the invalidity order. RCW 36.70A.302(2). In Kitsap County's case, it was under orders of invalidity from 1995 to early 1999. The BLR that looked back over this period most likely was measuring largely vested pre-GMA projects, which were essentially the only applications that could go forward.

Through considerable time, expense and effort, Kitsap County finally came into compliance with the Hearings Board's orders in 1999. Now, because of a new provision in the GMA requiring counties to "look back" – it continues to be penalized for past land use decisions.

*The Hearings Board Erred by Not Considering Vested Lots.* The BLR's conclusions are magnified by the large numbers of pre-GMA lots existing in Kitsap County. This is an issue the Hearings Board identified long ago in reviewing the County's first comprehensive plan:

> Reality dictates that its past development patterns will certainly affect its future for many years to come. Those past development patterns cannot be easily undone.

*Bremerton I, supra* at 39 (Code Publishing edition). In that case, the Board recognized the legal effect of vested lots:

> The Board is aware that there are many 1-and 2.5-acre parcels throughout the region. These can be shown on a current land use map and continue with whatever rights are guaranteed by state and local law, such as the vested rights doctrine and continued use under a legal nonconforming status. However, the county's future land use map and zoning regulations may not permit the future creation of such lot sizes.

*Bremerton I, supra* at 51 (emphasis added). And the Hearings Board again recognized the effect of pre-GMA lots and the prospective nature of GMA in another earlier Kitsap County case:

> *Pre-existing parcelization cannot be undone*, however there is no reason to perpetuate the past (i.e., creation of an urban land use pattern in the rural area) in light of the GMA's call for change.

*Port Gamble, supra* at 2657 (Code Publishing edition).

CTED also recognized this fact in its 2002 Report:

> Jurisdictions with a large inventory of lots created before GMA plans began to be carried out may have a lower achieved density until that inventory is replaced over time with subdivisions that meet the counties requirements under their GMA plans.

AR 54, App. IR 24168 at 1. *See also id.* at 7 ("It is anticipated that achieved densities will increase over time as pre-GMA vested developments are completed and GMA-compliant subdivisions come to represent the majority of new development.") Finally, this fact was also recognized in the County's BLR:

> One development constraint is the large number of smaller, nonconforming lots of record. Until those parcels are fully absorbed, the County may face obstacles in directing new growth towards urban areas.

AR 87 at 3.

While Kitsap County has made considerable progress to encourage growth in the urban areas, the fact remains that there are many pre-GMA "legacy lots" in the rural areas. And while many people are still seeking housing in the rural areas, the ratio between permits issued for the urban areas and the rural areas is steadily decreasing. Friends AR Tab 9, Att. F. This fact should have been considered by the Board before it concluded that development in the rural area demonstrated an inconsistency. In spite of its earlier decisions recognizing the legal effect of vested lots, the effect of the Board' finding is to penalize the County for the existence of these legally created parcels.

The Hearings Board did not take the legal consequences of vesting into account. *Quadrant,* 154 Wn.2d at 241 (admonishing the Hearings Board for failing to consider vested rights when determining whether an area was characterized by urban growth). The Hearings Board should also have recognized the prospective nature of the GMA, rather than requiring Kitsap County to implement measures to rectify decisions of the past. *Viking*, 115 Wn.2d. at 127 ("[T]he GMA is primarily prospective in nature, and is premised upon the recognition that influencing future planning decisions is more realistic than changing the decisions of bygone eras.").

Short of issuing a total moratorium on development in the rural areas, there is little Kitsap County can do to preclude development of these lots. Washington has a strong vested rights doctrine that requires the County to recognize rights associated with nonconforming lots. Kitsap County may be liable if it denies permits for such lots. *See Smoke v. Seattle,* 132 Wn.2d 214, 937 P.2d 186 (1997)(city held liable for refusing to recognize two separate lots); *Hoberg v. Bellevue*, 76 Wn. App. 357, 884 P.2d 1339 (1994)(city wrongly refused variance for a building permit on a nonconforming lot). Moreover, both the GMA and other case law recognize that denying use of property could result in a constitutional taking. RCW 36.70A.020(6); *Lucas v. South Carolina Coastal Council,* 505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992); *Guimont v. Clarke,* 121 Wn.2d 586, 854 P.2d 1 (1993); *Powers v. Skagit County*, 67 Wn. App. 180, 835 P.2d 230 (1992). The Hearings Board has previously acknowledged: "[B]y the same token, although not favored in the law, nonconforming uses are vested property rights which are protected." *Peninsula Neighborhood Ass'n v. Pierce County*, CPSGMHB No. 95-3-0071, Final Decision & Order (3/20/96) (citing *Summit-Waller Assn. v. Pierce County*, 77 Wn. App. 384, 388, 895 P.2d 405 (1995); *Van Sant v. Everett*, 69 Wn. App. 641, 649, 849 P.2d 1276 (1993)).

Kitsap County's rural zoning complies with GMA and has not been challenged. Kitsap County no longer allows *the creation* of such nonconforming lots. The Hearings Board noted that nonconforming lots "cannot be undone." This comports with the Board's statement that "while counties have authority to allow pre-existing urban-intensity uses to continue in the rural area, the expansion or enlargement of such uses would constitute prohibited new urban growth." *Port Gamble, supra* at 2656. It also comports with the *Viking* Court's pronouncement the GMA is prospective in nature.

In *Viking,* the Supreme Court made abundantly clear the prospective nature of GMA. There, Viking Properties sought a declaratory judgment to invalidate restrictive covenants that required one acre minimum lot sizes in the City of Shoreline. Viking argued that the covenants violated public policy because they did not meet the Hearings Board's "bright line" density of 4 dwelling units per acre. Not only did the Court reject the bright line rulemaking of the Hearings Board, it also stated that the pre-GMA actions, such as restrictive covenants, are "the type of 'local circumstances' accommodated by the GMA's 'broad range of discretion." *Viking,* 155 Wn.2d at 130. The Court noted "GMA was intended to coordinate the State's '*future growth,*'" and not to be used to "changing the decisions of bygone eras." *Id.* at 127.

Given that the County cannot "erase" these lots from the property inventory, it will simply take time in order for the nonconforming lots to be absorbed. Kitsap County has already zoned all of its rural areas at rural densities, so any new lot created in those areas will be an appropriate rural size. This is in accord with the prospective nature of the GMA, Kitsap County should not have been ordered to take actions to "undo" past decisions at the expense of the property owners, no matter how unfortunate the Hearings Board perceives those decisions to have been.

### *D. The Hearings Board Was Correct in Determining the County's Adopted Reasonable Measures Comply with the Act*

While disagreeing with the Hearings Board, Kitsap County nevertheless took action to comply with the CPSGMHB's decision regarding reasonable measures. Through resolution, the County Commissioners acknowledged a number of reasonable measures that had been adopted and implemented since the adoption of its first compliant comprehensive plan in 1998. Friends AR Tab 1 (Res. 154-2004) Again, KCRP and Harless appealed, this time joined by Futurewise, and this time claiming the reasonable measures were not adequate.

Before the CPSGMHB, the petitioners had the burden to show the County's action did not comply with GMA. RCW 36.70A.320(2). The Hearings Board afforded the proper deference to the County in its review

of this action, finding that the County complied with the GMA, meeting its December 1, 2004 deadline for adopting and implementing reasonable measures: "The Board is not persuaded that Kitsap has failed to comply with the GMA." Friends AR Tab 46 at 24. The Board was correct. The Board's earlier decision in *Bremerton II* required the county to adopt and implement measures reasonably likely to increase consistency by December 1, 2004. That had been done.

Futurewise argued that the reasonable measures were not effective because they were not adopted as part of the BLR. CP 166. It also presented argument on the adequacy of each identified reasonable measure, and presented "supplemental evidence" regarding growth in Kitsap County. CP 174-181. The Hearings Board properly afforded the County the deference required, and found Futurewise had not met its burden to show noncompliance. The Superior Court erred by not affording this deference, and by considering "evidence" that was neither relevant nor supported by the record.

Again, reasonable measures are required to be adopted and implemented *prior to the expansion of a UGA*. RCW 36.70A.215(1)(b). No UGA expansions were challenged in *1000 Friends.* The Superior Court, however, reversed the Hearings Board and found "clear and convincing evidence" that the reasonable measures were not sufficient to

increase consistency. CP 503. The Superior Court erred. There was not even substantial, let alone clear and convincing, evidence in the record showing that these reasonable measures were inadequate. Rather, the Superior Court's decision appears to be based solely on the fact that when first adopted, these measures were not specifically identified with the term of art "reasonable measures." CP 503. This is not a valid basis for reversal.

*The County Properly Recognized Pre-Existing Reasonable Measures.* On appeal, Futurewise argued that Kitsap County's formal recognition of previously-implemented reasonable measures was inadequate because it did not adopt "new" measures. CP 166.

Kitsap County has adopted and implemented many reasonable measures since it came into compliance with the GMA. Its only "error" was that it did not denominate each with the appellation "reasonable measure." The Hearings Board upheld the County's formal recognition of some of these measures as meeting the criteria for reasonable measures.[16] Friends AR Tab 46 at 24, 38. The mere fact that Kitsap County did not adopt these reasonable measures in specific response to and pursuant to the BLR does not mean they are not adequate as effective reasonable

[16] There are other, additional adopted and implemented reasonable measures that were not listed in Resolution 158-2004. Many examples are discussed in this brief.

measures. The Superior Court's reversal of that decision is not supportable.

The GMA does not define "reasonable measures." They are construed to be planning measures implemented to increase urban densities. The reasonable measures identified by the County were all measures taken to make development in the urban areas more attractive. The County has considerable discretion in what planning measures it deems appropriate. *Quadrant,* 154 Wn. at 240.

In 1998, Kitsap County adopted a new comprehensive plan that established new land use designations county-wide. CP 278. Also in 1998, Kitsap County adopted an entirely new zoning code to implement its plan. Since the adoption of the comprehensive plan in 1998, the County has concentrated on subarea plans. The subarea planning process allows the County to focus on smaller geographic areas. This has resulted in precise GMA planning, including more accurate land capacity analyses, and also allows measures to be tailored to that subarea. All of these processes included the adoption of reasonable measures.

Kitsap County has adopted zoning provisions for the unincorporated UGAs,[17] many of which meet the criteria for reasonable measures. For example, the "urban low" and "urban cluster" residential zoning classification include *minimum* zoning densities of 5 dwelling units per acre (dua), and *no* minimum lot requirement. KCC 17.330.060(A); 17.335.030.[18] AR Tab 30, Ex. D. The Urban High Residential zoning includes a *minimum* density of 19 dua. KCC 17.350.050. AR Tab 30, Ex. D. Such measures are designed to promote urban densities.

In 2003, Kitsap County adopted several new subarea plans. Those subarea plans include policies and goals promoting increased urban densities and serve as reasonable measures. AR Tab 30, Ex. D. The subarea plans' reasonable measures promote urban densities and further advance Kitsap County on the path to ideal post-GMA conditions.

Additional zoning regulations were promulgated in 2003, and also include measures designed to increase density in the UGAs. For example, master planning for development is required in some zones. KCC

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[17] Kitsap County only has authority for land use regulations in the unincorporated areas of the County. There are four incorporated cities within Kitsap County, each of which is responsible for implementing it own reasonable measures to increase density within the city if necessary. *See, Seattle-King County Realtors v. King County,* CPSGMHB No. 04-3-0028, Final Decision & Order (5/31/05) (holding that cities, not counties, are responsible for adopting reasonable measures if they are not meeting urban densities).

[18] For the convenience of the Court, relevant portions of the Kitsap County zoning ordinance and excerpts from subarea plans are attached hereto as Appendix B.

17.415.070. Master planning ensures that development is concurrent with the infrastructure and other urban amenities. Adequate infrastructure and urban amenities make a UGA more attractive for development. Other 2003 additions to the zoning code included design standards, specific transportation standards, and provisions for urban amenities. All of these can be considered reasonable measures as again, they promote development in urban areas. And although these regulations were not specifically labeled as "reasonable measures," they were implemented in order to further the goals of GMA and to promote densities into the UGAs.

In 2004, the Board of Commissioners adopted additional reasonable measures, albeit not specifically labeled as such. Friends AR Tab 68 (Ord. 326-2004). For example, in 2004, the County considered an increased demand for commercial and industrial lands. Three sites within UGAs were re-designated commercial to accommodate additional commercial development activity. AR Tab 1 (Ord. 326-2004 at 17). The new designations allow commercial and mixed use residential at higher densities. In addition, one property was re-designated to a higher residential density, an amendment formally recognized as a reasonable measure for the UGA. *Id.*

Futurewise argued that the reasonable measures the County identified through Resolution 158-2004 were not "adopted or implemented." CP

166. This argument is apparently based on the fact that the reasonable measures were in effect prior to the Hearings Board's ruling regarding the purported inconsistency. That fact does not render the reasonable measures noncompliant with RCW 36.70A.215, and Futurewise offered no support for its contention. The Hearings Board recognized this and properly upheld Kitsap County's action. Friends AR 46 at 24, 38.

Even though pre-GMA lots may constitute the basis for the alleged "inconsistency," the fact is Kitsap County's current zoning *precludes* creation of small lots in the rural area. The rural element of Kitsap County's comprehensive plan requires minimum lot sizes of five, ten or twenty acres depending upon the specific zone. AR Tab 89 at 56-57. There has never been any argument that Kitsap County's current rural comprehensive plan or zoning regulations do not comply with GMA. Rather, Futurewise asked that the Hearings Board (and the Superior Court) require Kitsap County to "undo" pre-GMA actions. This argument flies in the face of the Supreme Court's confirmation in *Viking* emphasizing the fact that GMA is prospective in nature. *Viking,* 155 Wn.2d at 127.

The Superior Court erred by giving credence to Futurewise's arguments, which did not meet the burden of proof to show the County violated GMA, but rather, were an attempt to dictate what planning measures it thinks the county should implement. This is not its role – that

is up to the discretion of the elected County officials. *Quadrant,* 154 Wn.2d at 238; *Viking*, 155 Wn.2d at 125.

*Futurewise Did Not Present Evidence in the Record to Support its Case.* Futurewise claimed "substantial evidence" in the record showing that the reasonable measures the County has implemented are not likely to increase consistency. CP 177. But in its litany of this "evidence," there was little or no citation to the record. "[S]ubstantial evidence is 'a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.'" *Thurston County v. Cooper Point Ass'n*, 148 Wn.2d 1, 8, 57 P.3d 1156, (2002) (*citing City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.,* 136 Wn.2d 38, 45, 959 P.2d 1091 (1998)). The only "evidence" shown was Futurewise's own conclusory statements, which was not sufficient to overturn the Hearings Board's decision.

In its briefs, Futurewise analyzed each of the County's adopted reasonable measures identified in Resolution 158-2004 and attacked each one. However, its litany of evidence utterly failed to provide any support with law or facts. CP 174-181. It did not cite to the record to make its case, rather, it presented conclusory arguments as to why the reasonable measures were not adequate. The Superior Court improperly gave credence to these arguments, when it should have rejected them. Such

conclusory statements did not meet the burden of proof before the Hearings Board, nor should have in Superior Court. We touch on some examples below.

Futurewise flatly stated, without any support, that provisions encouraging mixed uses have not worked, and that urban amenities such as parks and playgrounds will have no effect.[19] But it failed to point to *anything* in the record to support its claims. Futurewise dismissed accessory dwelling units as a reasonable measure, despite the fact they are permitted outright within UGAs, but subject to conditions and individualized review if not in a UGA. CP 174-175.

Futurewise claimed that the County's urban clustering provisions are not reasonable measures, but again provided no evidence to support its argument. CP 175. Instead, it referenced former zoning provisions that cannot be compared to the current land use codes. In fact, the County's zoning code provides that the Urban Cluster Residential zone is intended to "give flexibility to locate urban residential development." It "allows a combination of single family, townhouse, duplex, and multiple-family

[19] Futurewise argued that urban parks have no effect because there are "ample recreational amenities in rural areas," citing to the thousands of acres of state parks, state lands, and Kitsap County open space throughout the rural areas. CP 177. These facts actually support Kitsap County's program of preserving rural open space and are irrelevant to the value of urban parks and playgrounds.

housing, and zero lot line development" which encourages higher densities. KCC 17.335.010. This type of zoning provision is precisely the type of measure that is reasonably likely to encourage dense development in the urban areas.

With no factual support at all, Futurewise made a sweeping allegation that the provisions to encourage Urban Centers and Urban Villages somehow discourage urban infill. CP 176. The Urban Centers and Urban Villages concepts are widely-accepted strategies to maintain distinctive neighborhood character and to facilitate transportation centers. They preserve urban areas and make them attractive to homeowners.

On one hand, Futurewise argued that the County should be providing more capital facilities, such as sewers. But on the other hand, it dismissed measures concerning annexation strategies and urban growth agreements as ineffective because they "are governance issues." CP 180. To the contrary, such governance issues are integral to providing proper urban services, the very services Futurewise says are needed in the urban areas.

Futurewise argued that many or most of the reasonable measures were adopted by the County prior to its compliance with GMA, and therefore this was "evidence" that they are inadequate. This premise is completely erroneous. CP 174. Both Futurewise and the Superior Court failed to acknowledge the fact that in 1998, the entire comprehensive plan and

zoning code were completely revised. The zoning classifications are completely different, the standards for approval are completely different, and the conditions imposed are completely different.[20] It simply is not possible to take zoning provisions from an earlier code and compare it to the current code as was done. The Superior Court's summary conclusion that denominating existing provisions as reasonable measures could not be considered effective is not supported. Futurewise's conclusory arguments did not meet the CPSGMHB's burden of proof and its decision on this matter should not have been reversed.

*The "Supplemental Data" Does Not Provide Adequate Information to Supplement the BLR.* In *1000 Friends,* the Hearings Board permitted Futurewise to supplement the record with data the County had prepared for another purpose. Friends AR Tab 9, Attachments D-F. Even with this "evidence," the CPSGMHB found Futurewise had not met its burden of proof showing the County's reasonable measures were ineffective.

Before the Superior Court, Futurewise continued to argue that this data showed a continuation of the development patterns revealed in the BLR,

[20] For example, in the pre-GMA zoning ordinance cited by Futurewise, rural zones varied from 1 to 2.5 acre lot sizes. There can be no real comparison to current rural zoning ranging from 5 to 20 acre minimum lot sizes. Friends AR Tab 24 (Ord. 93-1983).

and the Superior Court apparently agreed.[21] Futurewise argued that the data was essentially a continuation of the BLR's analysis. CP 170. However, the data Futurewise relied upon is not comparable to the data used in a BLR and should not have been characterized as such.

Those documents included rough data provided to the Commissioners for allocating future population. They were prepared for informational purposes only and not as an analytical tool. As noted in Section VI.C above, a BLR measures the amount of net buildable land that has been developed in the urban area. The purpose is to measure urban densities and to evaluate the amount of urban land needed for the remaining portion of the planning period. RCW 36.70A.215(1), (3). The data relied upon by Futurewise did not include these measurements. The data made no deductions for unbuildable land, public areas, critical areas, or any of the other factors considered in a buildable lands report. Nor did all the documents include precise city data. Thus, these documents presented data deficiencies that cannot be used to ascertain what is happening on the ground in Kitsap County.

The data also lack much of the quality control that would be used in an actual evaluation in determining land capacity or buildable lands. *See*

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[21] It is not clear from the Superior Court's decision precisely what "evidence" Judge Wickham was referring to when he concluded that there was clear and convincing evidence to support Futurewise's arguments.

Friends AR Tab 30, Declaration of Dave Nash. One data set, supplemental Exhibit 1, likely includes all parcels regardless of whether they are actually developable, including parcels created for utilities and/or tax title strips. Friends AR Tab 9, Att. D. The number of "vacant parcels" within a UGA and/or city does not translate to actual dwelling units per acre (density), since the minimum densities within those areas may vary with zone. Supplemental Exhibit 2 shows residential construction in *unincorporated* Kitsap County only. Friends AR Tab 9, Att. E. It does not include cities. The fact that a majority of residential construction is in unincorporated Kitsap County makes sense because most of the UGA acreage is located within a city's UGA. Even so, supplemental Exhibit 2 does show that the average lot size *within* unincorporated UGAs has been steadily reducing (and urban densities steadily increasing). And Supplemental Exhibit 3 addresses permit numbers only – it does not relate to density or lot size. AR Tab 9, Att. F.

The data relied upon by Futurewise does not provide enough information to supplement the BLR and should not have been used as such. The Superior Court erred by considering it evidence. Futurewise and the Superior Court again ignored the GMA provisions providing the County considerable discretion in its planning, as well as recent direction by the Supreme Court that this discretion overarches the Court's review.

*Quadrant,* 154 Wn.2d at 238, *Viking,* 155 Wn.2d at 125. For the Superior Court to mandate specific planning courses of action, as demanded by Futurewise, violates the GMA and the Supreme Court's direction by eliminating the County's discretion.

### *E. The Hearings Board Erred In its Conclusion that Kitsap County's Ten-year UGA update Was Due by December 1, 2004*

In a Reconsideration Order in *Bremerton II,* the CPSGMHB volunteered an opinion that the December 1, 2004 deadline also applied to the ten-year review required under RCW 36.70A.130(3). CP 91. This order was issued approximately ten weeks before that "deadline" and took the County completely by surprise. The County had neither resources nor time to complete such a review in less than ten weeks.

In 2004, Kitsap County conducted its seven-year review according to RCW 36.70A.130(1) and adopted comprehensive plan amendments pursuant to RCW 36.70A.130(2), thus taking action pursuant to RCW 36.70A.130(4). Friends AR 1, Ord. 326-2004. The County's obligation to consider a new population allocation is required in its seven-year review pursuant to RCW 36.70A.130(1), which *may be* but is *not required* to be, combined with the ten-year review. In 2002, the County completed its BLR by the required deadline, its next BLR is due five years from that

date, in 2007. CP 68. The County has not, however, finished its ten-year review pursuant to RCW 36.70A.130(3).

Pursuant to the plain language of the statute, the County had expected to conduct its ten-year review ten years from the last time it adopted UGAs countywide, which would not be until the year 2008. Consequently, it had not started any work on a ten-year review in 2004. Predictably, the CPSGMHB advisory opinion set the stage for yet another appeal claiming the County had "failed to act" by not completing its ten-year review in time. In *1000 Friends,* the CPSGMHB again held the County had missed this deadline and ordered the County to comply within a year. Friends AR Tab 46 at 37. Moreover, because the County was found in noncompliance with a "deadline' under RCW 36.70A.130, it is subject to economic sanctions under RCW 36.70A.130(7).

The Hearings Board erred in concluding Kitsap County was required to complete its ten-year review by December 1, 2004. Friends AR Tab 46 at 36-37. The Hearings Board based its statutory interpretation upon a painstaking review of the legislative history of the GMA, attempting to correlate various dates in the Act to reach a conclusion that the ten-year review runs from the July 1, 1994 initial deadline for the adoption of comprehensive plans. There is no need for resort to analyzing legislative history where a statute is plain on its face. *Brown*, 155 Wn.2d at 265.

Regardless of its painstaking analysis of the legislative history, the Hearings Board is, in reality, simply "reading into" into the Act what this deadline is. This is error. *In re Custody of Smith*, 137 Wn.2d 1, 12, 969 P.2d 21 (1998). As shown below, the Hearings Board erred because:

(1) the Hearings Board rejected the plain reading of the statute that provides only that a UGA review must be conducted every ten years;

(2) Kitsap County completed its designation of UGAs in 1998;

(3) the Hearings Board's analysis regarding this deadline *only* works if applied to counties initially required to plan under the Act and fall under the first deadline in RCW 36.70A.130(4)(a); the Board ignores the various deadlines under RCW 36.70A.130(4)(b) - (d);

(4) the Hearings Board failed to acknowledge that there are two cross-references between the seven-year review (RCW 36.70A.130(1)) and the statutory deadlines (RCW 36.70A.130(4)), and none between the ten-year review and that deadline;

(5) the Hearings Board failed to acknowledge that it would be impossible to meet the deadline under RCW 36.70A.215 *and* combine that review with the ten-year review, as is allowed under RCW 36.70A.130(3), rendering that language superfluous; and

(6) there is nothing in the statute itself that directs the County to meet the December 1, 2004 deadline for completing its ten-year UGA review.

*The Hearings Board's Interpretation Contradicts the Plain Language of the Statute.* RCW 36.70A.130(3) is clear on its face and requires only that a county must review its UGAs and urban densities every ten years. The statute provides no deadline, no starting date, nor a cross-reference to any other deadline or starting date. In contrast, RCW 36.70A.130(1), the

provision regarding the seven-year review, specifically refers to RCW 36.70A.130(4) for a December 1, 2004 deadline for completion of that review. The Board erred in its interpretation that the seven-year review deadline also applies to the ten-year UGA update.

The pertinent provisions of RCW 36.70A.130, as the statute read when the Hearings Board analyzed it, are as follow:[22]

> (1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. A county . . . shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter ***according to the time periods specified in subsection (4) of this section. . . . The review and evaluation required by this subsection may be combined with the review required by subsection (3) of this section.*** The review and evaluation required by this subsection shall include, but is not limited to, consideration of critical area ordinances and, if planning under RCW 36.70A.040, *an analysis of the population allocated* to a city or county from the most recent ten-year population forecast by the office of financial management.
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> ***
>
> (2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year. ***"Updates" means to review and revise, if needed, according to subsection (1) of this section, and the time periods specified in subsection (4) of this section.*** . . .
>
> ***
>
> (3) Each county that designates urban growth areas under RCW 36.70A.110 shall review, ***at least every ten years***, its designated urban

[22] As noted *supra*, this provision was changed in 2005. The changes did not affect the impact of the Board's ruling on Kitsap County.

growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas. The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. ***The review required by this subsection may be combined with the review and evaluation required by RCW 36.70A.215.***

(4) The department shall establish a schedule for counties and cities to take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter. The schedule established by the department shall provide for the reviews and evaluations to be completed as follows:

(a) On or before December 1, 2004, ***and every seven years thereafter***, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(b) On or before December 1, 2005, ***and every seven years thereafter***, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

(c) On or before December 1, 2006, ***and every seven years thereafter***, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

(d) On or before December 1, 2007, and ***every seven years thereafter***, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

The statute is plain on its face. It states that a UGA review must be done every ten years. There is no starting date nor deadline specified. There is no cross reference to the dates in subsection (4). It is logical that the first review occur ten years after the date the final UGAs were established. In Kitsap County, that was in 1998. The County's first ten-year review is due no sooner than 2008.

*The Principles of Statutory Construction Support the Plain Reading of the Statute.* A plain reading of RCW 36.70A.130 shows that the December 1, 2004 deadline *only* applies to the seven-year review required under RCW 36.70A.130(1). It does not apply to the deadline for the first ten-year UGA update under RCW 36.70A.130(3). Although it is not necessary to resort to the rules of statutory construction when a statute is unambiguous, those rules support the County's interpretation. *State v. Roggenkamp*, 153 Wn.2d 614, 621, 106 P.2d 196 (2005).

Subsection (1) of RCW 36.70A.130 sets forth requirements for the seven-year review, subsection (3) sets forth requirements for the ten-year review, and subsection (4) sets forth deadlines for compliance with subsection (1). RCW 36.70A.130(1) states that the seven-year review should be taken "***according to the time periods specified in subsection (4) of this section,***" and that it "***may be combined with the review required by subsection (3) of this section***."

The Hearings Board's reading of RCW 36.70A.130(1) completely ignores the explicit reference to subsection (4), which sets forth the deadline of December 1, 2004. Further, the Hearings Board's interpretation changes the language that *permits* the combined reviews under subsections (1) and (3) to *mandate* the combination of such a review. All provisions of a statute must be given effect and harmonized. *Roggenkamp*, 153 Wn.2d at 624.

In contrast to subsection (1), subsection (3) states only that "Each county that designates urban growth areas under RCW 36.70A.110 shall review, ***at least every ten years***, its designated urban growth area or areas. . ." and "***The review required by this subsection may be combined with the review and evaluation required by RCW 36.70A.215.***" (Emphasis supplied.)

Subsection (3) does not refer to the time line set forth in subsection (4), it refers only to a review every ten years. Kitsap County last adopted its UGAs in 1998, its deadline for its ten-year review is not until ten years past that date. The fact that the ten-year review is not required by December 1, 2004, is underscored by the provision in subsection (1) that provides that seven-year review "***may be combined*** with the review required by subsection (3) of this section;" and the provision in subsection (3) that the ten-year review "***may be combined***" with the buildable lands

analysis required under RCW 36.70A.215. These provisions clearly show that correlating the various deadlines is permissive, not mandatory. In fact, the buildable lands reports were also subject to an initial deadline, and must be repeated every five years. Under the Hearings Board's interpretation those deadlines would *never* be the same, unless the County undertook a ten-year review in five years from the last review. Thus, the language allowing the combination is superfluous under the Hearings Board's reading. *Roggenkamp,* 153 Wn.2d at 624.

Under the rules of statutory construction, all provisions of a statute should be read in context; the words of a statute must be construed to give effect to all language used; each word should be given effect where possible; each part of a statute should be is given effect with every other part or section; and the statutory words should not be read in isolation. *Cramer v. Van Parys*, 7 Wn. App. 584, 586, 500 P.2d 1255 (1972). If a statute uses different words within the same statute, the legislature is deemed to intend a different meaning to those terms. *Roggenkamp,* 153 Wn.2d at 625. A reviewing body may not add words where the legislature has chosen not to include them. *Restaurant Development, Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003).

Another rule of statutory construction provides that where a statutory provision expressly includes a provision omitted elsewhere, it is evidence

that the legislature intentionally meant to expressly exclude that provision. In other words, since RCW 36.70A.130(1) expressly refers to the deadline in RCW 36.70A.130(4) and RCW 36.70A.130(3) does not, it means that the legislature *intended* that subsection (4) does not apply to subsection (3). Had the legislature intended otherwise it would have so stated. This comports with the principle of *expressio unius est exclusio alterius*:

> We adhere to the rule of expressio unius est exclusio alterius -- specific inclusions exclude implication. In other words, "[w]here a statute specifically designates the things upon which it operates, there is an inference that the Legislature intended all omissions." . . .In such circumstances, "the silence of the Legislature is telling" *and must be given effect.*

*In re Restraint of Bowman*, 109 Wn. App. 869, 875, 38 P.3d 1017 (2001) *rev. denied* 146 Wn.2d 1001 (2002) (*quoting In re Restraint of Hopkins,* 137 Wn.2d 897, 901, 976 P.2d 616 (1999)(emphasis in original)).

Here, the language in RCW 36.70A.130(1) is virtually identical to that in RCW 36.70A.130(4). Subsection (1) states that a county shall "review and, if need, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter." Subsection (4) states that the department shall establish a schedule for counties "to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter." In contrast, RCW 36.70A.130(3) simply states that counties "shall review, at

least every ten years, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area." The language is dissimilar; no reference is made to the deadlines in RCW 36.70A.130(4), and there is no "deadline" established. Under either the plain reading of the statute, or following the rules of statutory construction, it is impossible to reach the conclusion that the deadline for the seven-year review also applies to the deadline for the ten-year review.

*CTED Interpreted These Provisions According to Their Plain Meaning*. In addition to the plain reading of the statute, Kitsap County relied upon guidance from the state and other sources to determine that its ten-year review was not due until 2008 or even 2009. CTED is charged with providing GMA technical assistance to local governments. RCW 36.70A.190(4). As early as September, 2002, CTED issued guidelines in the form of "Frequently Asked Questions Regarding GMA Updates." Friends AR Tab 33, Ex. A. The CTED guidelines informed local governments what is, and is not, in the statute – specifically, that the statute fails to provide a starting date for the ten-year review.

CTED noted the ten-year review was not on the same time schedule as the seven-year review, a logical deduction. Further, the CTED guidelines note that RCW 36.70A.130(3) does not specify a starting date for

determining the deadline, and noted "Since the provision sets a period of time, rather than a specific date, the logical interpretation is that the ten-year deadline begins to run when a final UGA is adopted as part of a comprehensive plan." Friends AR Tab 33 Ex. A at 5. The guidelines specifically advised that in cases involving a determination of invalidity, that a Board's order lifting the invalidity "resets the clock" for determining the deadline. In a footnote, CTED further clarified:

> The starting date for calculating the ten-year deadline should be reset to the date of the board's order lifting invalidity even where the board's determination of invalidity is appealed in court.

Friends AR Tab 33, Ex. A at 4-5.

The CTED guidance was correct and consistent with the plain language of the statute. However, when these very guidelines were presented to the Hearings Board in *1000 Friends*, it simply chose to ignore them.[23] Here, a state agency is charged with providing technical assistance to local government, and that assistance was provided several years before the Hearings Board first heard a case on the subject. Nevertheless, because CTED's advice is not legally binding, the County was put in the position of having the Hearings Board come up with a new

[23] In its order, under "Positions of the Parties," the Hearings Board acknowledged that the County argued that its interpretation of the statute was consistent with the CTED guidance, and that Harless countered that CTED guidance documents are not legally binding. In its own discussion of RCW 36.70A.130(3), however, the Hearings Board fails to address these guidance documents. Friends AR Tab 46 at 30-37.

deadline at the eleventh hour, and moreover, a deadline including sanctions if not met. Such a situation does not comport with the Supreme Court's recent direction regarding the role of the Hearings Board and should be rejected by this Court. *Viking,* 155 Wn.2d at 129.

Since Kitsap County adopted its UGAs in 1998, its deadline for its ten-year review is not until ten years past that date. It was reasonable for the County to interpret the statute as CTED did, and rely on the CTED interpretation, as the language of the statute is unambiguous.

*The Legislative History Does Not Support the Hearings Board's Interpretation of the Ten-Year Review Deadline.* There was no need for the Hearings Board to engage in its painstaking analysis of the legislative history of GMA, the statute is plain on its face. *Brown*, 155 Wn.2d. at 265. ("If a statute is not plain on its face, this court will turn to legislative history")(*Citing Dep't of Ecology v. Campbell & Gwinn, L.L.C.,* 146 Wn.2d 1, 12, 43 P.3d 4 (2002)). But the legislative history itself does not support the conclusion that the ten-year review of UGAs is December 1, 2004. Finally, GMA provisions are to be strictly construed, and the Hearings Board should not expand the language of the statute by reading in a deadline that does not exist. *Quadrant,* 154 Wn at 244. Even though there is no need to resort to statutory construction principles, application of those rules here clearly show that the Hearings Board was in error.

The Hearings Board reasoned that the ten-year deadline for Kitsap County was December 1, 2004, in part because deadline for initial UGA designation set forth in RCW 36.70A.040 was July 1, 1994. Friends AR Tab 46 at 32. However, the Hearings Board's analysis fails on a number of grounds. RCW 36.70A.040 set two initial deadlines, one in 1994 for counties with populations of over 50,000 and the second in 1995 for counties with populations under 50,000. As noted in note 3, *supra*, twenty-nine counties were fully planning under the GMA by 1993. Yet there are ***a variety of deadlines*** set for these counties under RCW 36.70A.130(4). RCW 36.70A.130(4) sets four different deadlines, ranging from 2004 to 2007, and no reference to RCW 36.70A.040 or the initial date that each County was required to designate its final UGA. Thus, the statute itself does not link the deadlines set in RCW 36.70A.130(4) to the date the initial comprehensive plan or UGA designations were due. The Board's analysis fails for other counties planning under the GMA. [24]

Moreover, each of these provisions regarding the staggered deadlines includes the language implying ***only*** a seven-year cycle of review periods:

[24] Actually, if the ten-year review was to run from the initial deadline of setting UGAs, it would be July 1, 2004, not December 1. The Hearings Board recognized this discrepancy in a footnote, implying only that the Legislature apparently intended to add six months to the ten-year review, again reading into the statute. *Friends AR* Tab 46 at 35, n.33.

"on or before December 1, [year] ***and every seven years thereafter***, . . .." Thus, it is impossible to trace these various deadlines back to the year the first comprehensive plans were due.

Furthermore, in its review of legislative history, the Hearings Board acknowledged many of the initial deadlines changed with legislative amendments. The legislative history simply reinforces the fact that GMA is still "riddled with inconsistencies." As the *Quadrant* court noted:

> Relevant here, the GMA, at its inception, was "riddled with politically necessary omissions, internal inconsistencies, and vague language." This troubled beginning "spawned statutory ambiguity about the locus of the line between state mandate and local policy discretion" in fashioning UGAs.

*Quadrant,* 154 Wn.2d at 232 (quoting Richard L. Settle, *Washington's Growth Management Revolution Goes to Court*, 23 SEATTLE U.L. REV. 5, 8 (1999)). The Hearings Board emphasized the fact that RCW 36.70A.130(3) was never amended, stating this supported its conclusion that the deadline should be December 1, 2004. The County agrees that the fact that RCW 36.70A.130(3) was never amended is significant, but it is significant *because no deadline or starting date was added.* In contrast, RCW 36.70A.130(4) was amended at the same time that RCW 36.70A.130(1) was changed, and was used to set a deadline for the seven-year review set forth in .130(1). The legislature could easily have set a deadline for the ten-year UGA update, but it did not.

As part of its seven-year review, clearly due by December 1, 2004, Kitsap County adopted population allocations to the year 2025 and has begun implementing those allocations into its planning processes. Friends AR Tab 68 (Ord. 327-2004). The fact that it might not complete its *countywide* adjustment of the UGAs until its ten-year review does not necessarily put the county "out of sync" with the planning processes. In fact, RCW 36.70A.130(1) requires the county to review its population allocations *every seven years.* This statutory provision also undermines the Hearings Board's "logical" analysis stemming from the 1994 date.

In sum, the GMA provides the following:

- RCW 36.70A.130(1) requires counties to "review, and if needed, revise its comprehensive plan and development regulations to ensure the plan and regulations comply with the requirements of [the GMA]," and sets a schedule for such review, including adoption of population allocations ***every seven years,*** beginning with an initial deadline set forth in RCW 36.70A.130(4);

- RCW 36.70A.130(2) also makes the connection that the "updates" required under RCW 36.70A.130(1) must be done in compliance with RCW 36.70A.130(4);

- RCW 36.70A.130(3) simply states that counties "shall review, at least every ten years" its UGAs – there is no cross reference to RCW 36.70A.130(4);

- RCW 36.70A.130(4) uses virtually identical language to that in RCW 36.70A.130(1), i.e., "review, and if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of [the GMA]";

- RCW 36.70A.130(4) sets a staggered series of deadlines for various counties, regardless of when they initially designated their UGAs, and for each deadline, RCW 36.70A.130(4) states additional reviews must take place ***every seven years thereafter;***

- RCW 36.70A.215 requires that a BLR be prepared ***every five years*** starting in 2002. This means the BLRs will be required in years ending in 2 or 7. Requiring the ten-year review to be done in 2004 and every ten years thereafter would render the language allowing the BLR to be combined with the ten-year review superfluous.

There is simply no way to reconcile the express language that the review under RCW 36.70A.130(1) be done on a *seven year schedule,* the language in RCW 36.70A.130(4) that sets varying dates for the first seven-year review, with the general language of the requirement that counties review their UGAs and densities every ten years. The Hearings Board erred in interpreting the Act in this manner.

### *F. The Hearings Board Acted Outside its Jurisdiction By Issuing Advisory Opinions*

Pursuant to RCW 36.70A.290(1), the Board is prohibited from issuing "advisory opinions on issues not presented to the board in the statement of issues, as modified by any prehearing order." To ensure compliance with this mandate, the Board's prehearing orders require that the parties specify the legal issues that are being addressed in each brief. *See* AR Tab 19 at 8, and Friends AR Tab 8 at 6. The Board's prehearing orders also note: "Legal Issues, or portions of Legal Issues, not briefed in the Prehearing Order will be deemed to have been abandoned and cannot be resurrected in Reply Briefs or

in oral argument at the Hearing on the Merits." AR Tab 19 at 8; Friends AR Tab 8 at 6.

In this case, the Hearings Board issued advisory opinions in both *Bremerton II* and *1000 Friends.* First, in *Bremerton II*, as has been shown above, the Hearings Board "clarified" in its order on reconsideration that Kitsap County's ten-year review was due in less than three months. CP 91. The issue of the deadline in the ten-year review had not been raised as an issue by the parties nor briefed nor argued by any of the parties. It is likely there would have been no challenge on this issue had the Board not stated that this deadline was upcoming. The Hearings Board's ruling on this issue was solely advisory and outside of its jurisdiction.

Second, in *1000 Friends*, the Hearings Board went into great detail regarding measures the County should consider as future reasonable measures. While upholding the County's action, the Board suggested that "Measures to reduce rural density, such as TDRs and lot aggregation should be on the table." Friends AR Tab 46. The Board also noted:

> Measures might be on the table, for example, amending the CPPs to require higher density along transit routes in cities and unincorporated urban areas; establishing minimum densities for subdivisions in both cities and the unincorporated urban area; modifying sub-area planning to disallow UGA expansion; requiring UGA expansion to be offset by contraction elsewhere; requiring that all UGA adjustments be considered on a county-wide basis (e.g., discontinue sub-area and ad hoc site-specific UGA expansions); rolling population targets forward every ten

years, as required by the GMA, rather than every five years; targeting capital facilities and amenities to support urban density.

Friends AR Tab 46 at 25 n. 15 (emphasis in original).

The Hearings Board should not be providing such gratuitous advice. All this "advice" does is set the County up for future appeals. It also may call into question the Hearings Board's neutrality in later appeals on those issues. As the Supreme Court recently noted in *Viking,* the GMA sets up a general framework to guide jurisdictions, and the County has a broad range of discretion to consider its local circumstances in planning. *Viking,* 155 Wn.2d at 125. Nor does GMA prescribe a single approach to growth management – a county has the ultimate responsibility to implement its planning goals and vision. *Id.* The Court should reject the CPSGMHB's authority to issue such advisory opinions by reversing the Board's decision on the ten-year review deadline

## VII. CONCLUSION

For all of the reasons set forth above this Court should:

(1) Reverse the CPSGMHB decisions that RCW 36.70A.215 requires counties to evaluate rural growth in a Buildable Lands Report;

(2) Reverse the CPSGMHB decisions finding that Kitsap County's Buildable Lands Report demonstrated an inconsistency that had to be remedied by the adoption and implementation of reasonable measures;

(3) Reverse the CPSGMHB decisions that Kitsap County's deadline for the ten-year UGA update under RCW 36.70A.130(3) was due no later than December 1, 2004;

(4) Reverse the Superior Court decision that Kitsap County's identified reasonable measures in Resolution 154-2004 were not adequate to show compliance with the GMA; and

(5) Reverse the CPSGMHB decisions in *Bremerton II* and *1000 Friends* that were advisory in nature.

(6) Remand the matters to the CPSGMHB for further proceedings consistent with this Court's order.

RESPECTFULLY SUBMITTED this 3 day of April, 2006.

RUSSELL D. HAUGE
Kitsap County Prosecuting Attorney

Shelley E Kneip

SHELLEY E. KNEIP
WSBA No. 22711
Deputy Prosecuting Attorney
Attorney for Appellant Kitsap County

## PROOF OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

That I am a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to the above-entitled action and competent to be a witness therein;

That on the 3rd day of April, 2006, I made arrangements with ABC Legal Messengers for the filing of the original and one copy of Appellant's Opening Brief with the Clerk of the Court, Washington State Supreme Court, Temple of Justice, Olympia, Washington, 98504.

Further, that on the 3rd day of April, 2006, I made arrangements with ABC Legal Messengers for the delivery of a copy of the same to the following:

Port Gamble S'Klallam Tribe
31912 Little Boston Road
Kingston, WA 98346

John T. Zilavy, Tim Trohimovich and Simi Jain
Futurewise
1617 Boylston Avenue, Suite 200
Seattle, WA 98122

Martha P. Lantz
Washington State Attorney General's Office
1125 Washington Street S.E.
Olympia, WA 98504-0110

Elaine Spencer
Graham & Dunn PC
Pier 70
2801 Alaskan Way, Suite 300
Seattle, WA 98121-1128

Jerry Harless
3931 Lieseke Lane SW
Port Orchard, WA 98366

Suquamish Tribe
Mark L. Bubenik
15838 Sandy Hook Road
Suquamish, WA 98392

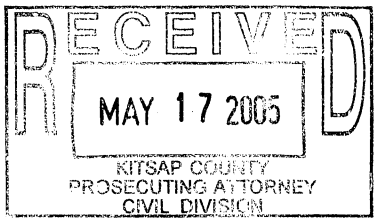
David A. Bricklin
Bricklin Newman Dold, LLP
1001 Fourth Avenue, Suite 3303
Seattle, WA 98154

Respectfully submitted this 3 day of April, 2006, at Port Orchard, Washington.

DEBBIE MEYER

# APPENDIX A

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
**FOR THURSTON COUNTY**




KITSAP COUNTY, Petitioner

v.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD, et a, Respondents

and

MANKE LUMBER COMPANY, et al., Respondent Intervenors.

---

THE SUQUAMISH TRIBE, Petitioner

v.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD, et al., Respondents.

---

**Thurston County Case No. 04-2-02138-1**

Kitsap County Case No. 04-2-02544-5

[CPSGMHB Underlying Case No. 04-3-0009c]

## CERTIFICATION OF RECORD

Dated this 12th day of May, 2005

Linda Kerr Stores

Linda Kerr Stores, Administrative Officer
Central Puget Sound Growth Management
Hearings Board

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
**IN AND FOR THE COUNTY OF THURSTON**

| | | |
|---|---|---|
| THE SUQUAMISH TRIBE,<br><br>Petitioner,<br><br>vs.<br><br>CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD,<br><br>Respondent. | ) | Case No. 04-2-02138-1<br><br>INDEX AND CERTIFICATION OF THE RECORD |

## NOTE TO INDEX

All filings in the matter of Central Puget Sound Growth Management Hearings Board (**CPSGMHB** or the **Board**) Case No. 04-3-0009c are listed chronologically in the table below. Declaration, Affidavit, or Certificate of Delivery or Service, while attached to the corresponding document and included in the page number total are not individually referenced in the index. In addition, the number of pages indicated in includes appendices, exhibits, and other supplementary materials to the filings referenced in the Index.

| Tab # | Date | Filing Title: | Filed By: | Pp: |
|---|---|---|---|---|
| **Volume I:** | | | | |
| 1. | 02/05/04 | Petition for Review (-04-3-0008) | Petitioner | 51 |
| 2. | 02/11/04 | Petition for Review (04-3-0009) | Petitioner | 9 |
| 3. | 02/11/04 | Notice of Appearance (Bremerton) | Respondent | 3 |
| 4. | 02/12/04 | Notice of Hearing and Order of Consolidation | CPSGMHB | 9 |
| 5. | 02/18/04 | Notice of Appearance (Suquamish) | Respondent | 3 |
| 6. | 02/19/04 | Notice of Association of Counsel | Respondent | 4 |
| 7. | 02/24/04 | Declaration of Service | Petitioner | 3 |
| 8. | 03/04/04 | Declaration of Ron Reid in Support of Motion to Intervene | Intervener | 6 |
| 9. | 03/04/04 | Declaration of Laura Overton Johannes in Support of Motion to Intervene | Intervener | 7 |
| 10. | 03/04/04 | Motion to Intervene | Intervener | 5 |
| 11. | 03/04/04 | Manke Lumber Company's Motion to Intervene | Intervener | 5 |

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| 12. | 03/05/04 | Declaration of Holly Manke White in Support of Manke Lumber Company's Motion to Intervene | Intervener | 6 |
| 13. | 03/05/04 | McCormick Land Company Motion to Intervene | Intervener | 10 |
| 14. | 03/08/04 | Motion of Olympic Property Group to Intervene | Intervener | 5 |
| 15. | 03/08/04 | Respondent's Index to the Record | Respondent | 61 |
| 16. | 03/08/04 | Declaration of Jon Rose in Support of Motion of Pope Resources to Intervene | Intervener | 25 |

**Volume 2-A and Volume 2-B:**

| | | | | |
|---|---|---|---|---|
| 17. | 03/10/04 | Kitsap County's Submittal of Core Documents | Respondent | 867 |

**Volume 3:**

| | | | | |
|---|---|---|---|---|
| 18. | 03/12/104 | City's Revised Legal Issues | Petitioner | 3 |
| 19. | 03/15/04 | Prehearing Order | CPSGMHB | 15 |
| 20. | 03/15/04 | Letter Regarding Consolidation | Petitioner | 5 |
| 21. | 03/19/04 | Bremerton Core Documents | Petitioner | 212 |
| 22. | 03/22/04 | Respondent's Motion to Dismiss SEPA Issues | Petitioner | 46 |
| 23. | 03/22/04 | Motion of 1000 Friends of Washington for Leave to File Amicus Curiae Brief | Intervener | 9 |
| 24. | 03/23/04 | Corrected Prehearing Order | CPSGMHB | 3 |
| 25. | 03/23/04 | Manke Lumber Company's Motion Requesting Board to Take Judicial Notice of Prior Briefing or Alternatively to Supplement Record | Respondent | 65 |
| 26. | 03/23/04 | Letter Regarding Correction to Prehearing Order | Petitioner | 3 |
| 27. | 03/24/04 | City's Final Revised Legal Issues | Respondent | 3 |
| 28. | 03/26/04 | Petition to Intervene / Supporting Declaration of Ken Attebery | Intervener | 7 |
| 29. | 03/29/04 | Letter Regarding Intervention | Respondent | 2 |

**Volume 4:**

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|---|---|---|---|---|
| 30. | 03/30/04 | Letter Regarding Intervention | Petitioner | 1 |
| 31. | 04/01/04 | Index of Exhibits to be Used | Respondent | 13 |
| 32. | 04/02/04 | Amended Index to the Record | Respondent | 39 |

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|---|---|---|---|---|
| 33. | 04/05/04 | Petitioner City of Bremerton's Response to Motion to Dismiss on SEPA Issues | Petitioner | 37 |
| 34. | 04/05/04 | Order on Intervention and Amicus Curiae | CPSGMHB | 6 |
| 35. | 04/06/04 | Letter Regarding Manke Lumber Company's Motion Requesting Board to take Judicial Notice | Respondent | 1 |
| 36. | 04/12/04 | Respondent Kitsap County's Reply on Motion to Dismiss | Respondent | 77 |
| 37. | 04/15/04 | Petitioners Suquamish Tribe, et al.'s Opening Brief | Petitioner | 302 |
| 38. | 04/15/04 | City's Prehearing Brief | Petitioner | 61 |
| 39. | 04/22/04 | Order on Motions Fax Conformations | CPSGMHB | 11 |
| 40. | 04/22/04 | Order on Motions | CPSGMHB | 11 |
| 41. | 04-30/04 | Errata to Suquamish Tribe's Opening Brief and Omitted Exhibits | Respondent | 39 |
| 42. | 05/03/04 | Order Correcting the Case Schedule | CPSGMHB | 3 |
| 43. | 05/10/04 | Order Setting Location for Hearing on the Merits | CPSGMHB | 4 |

**Volume 5:**

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|---|---|---|---|---|
| 44. | 05/12/04 | Additional Core Documents | Respondent | 514 |

**Volume 6:**

| | | | | |
|---|---|---|---|---|
| 45. | 05/12/04 | Intervener Port of Bremerton's Prehearing Brief | Intervener | 14 |
| 46. | 05/13/04 | Second Amended Index to the Record | Respondent | 2 |
| 47. | 05/13/04 | Kitsap County's Motion to Strike | Respondent | 3 |
| 48. | 05/13/04 | Brief to Intervener McCormick Land Company | Intervener | 41 |
| 49. | 05/13/04 | Index to Memorandum of the Overton Family et al. in Response to Petitioner's Challenge to Section 10, Paragraph 7 of Kitsap County Ordinance No. 311-2003 | Intervener | 3 |

| | | | | |
|---|---|---|---|---|
| 50. | 05/13/04 | Memorandum of the Overton Family, Alpine Evergreen Co., Inc. and Olympic Property Group in Response to Petitioner's Challenge to Section 10, Paragraph p7 of Kitsap County Ordinance No. 311-2003 | Intervener | 18 |
| 51. | 05/13/04 | Kitsap County's Prehearing Brief Regarding Issues 7-11, 24, 25 and 27 | Respondent | 255 |
| 52. | 05/13/04 | Declaration of Shelley E. Kneip | Respondent | 32 |
| 53. | 05/13/04 | Manke Lumber Company's Response to Petitioner's Prehearing Briefs | Intervener | 228 |

**Volume 7:**

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|---|---|---|---|---|
| 54. | 05/13/04 | Kitsap County's Prehearing Brief on Issues 12 – 23, 26 and 27 | Respondent | 88 |
| 55. | 05/19/04 | Letter Regarding Legal Issues | Respondent | 5 |
| 56. | 05/24/04 | Stipulation and Order | Respondent | 4 |
| 57. | 05/25/04 | Letter Regarding 1000 Friends Amicus Curiae | Respondent | 2 |
| 58. | 05/25/04 | Stipulation Regarding Hearing on the Merits | Respondent | 6 |
| 59. | 05/27/04 | Letter Regarding Non – Filing of Amicus Status | Intervener | 1 |
| 60. | 05/27/04 | City's Reply to Respondent's Briefs | Petitioner | 25 |
| 61. | 05/28/04 | Petitioners Suquamish Tribe, et al.'s Reply Brief | Petitioner | 108 |
| 62. | 06/01/04 | Letter Regarding Filed Documents | Petitioner | 1 |
| 63. | 06/07/04 | Kitsap County's Second Motion to Strike | Respondent | 5 |
| 64. | 06/08/04 | Letter Regarding Striking Exhibits IR – A & IR – B | Petitioner | 3 |
| 65. | 06/10/04 | Statement of Additional Authority | Petitioner | 17 |
| 66. | 06/17/04 | Letter Regarding Exhibit List | Respondent | 9 |
| 67. | 06/18/04 | Letter Regarding Hearing on the Merits | Intervener | 8 |
| 68. | 06/21/04 | City's Exhibit List | Petitioner | 5 |
| 69. | 06/22/04 | Letter Regarding Exhibit List | Petitioner | 6 |
| 70. | 06/24/04 | Statement of Additional Authorities | Petitioner | 8 |
| 71. | 06/24/04 | Transcript – **Hearing on Merits** | CPSGMHB | 194 |
| 72. | 06/25/04 | Letter Regarding Manke Lumber | Intervener | 3 |
| 73. | 06/25/04 | Notice of Unavailability | Respondent | 5 |

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| 74. | 06/28/04 | Letter Regarding Court of Appeals Opinion | Intervener | 19 |

**Volume 8:**

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|---|---|---|---|---|
| 75. | 08/09/04 | Final Decision and Order | CPSGMHB | 67 |
| 76. | 08/20/04 | Motion for Reconsideration by Petitioners Suquamish Tribe, et al. | Petitioner | 17 |
| 77. | 08/20/04 | Order Correcting Deadline for Request to Participate in Compliance Proceeding | CPSGMHB | 4 |
| 78. | 08/23/04 | Order Requesting Answer to Motion for Reconsideration | CPSGMHB | 3 |
| 79. | 08/26/04 | Joinder of Respondents Overton & Associates, Olympic Property Group and Alpine Evergreen Co. | Respondent | 4 |
| 80. | 08/27/04 | Intervener Port of Bremerton's Reply to Motion for Reconsideration | Intervener | 5 |
| 81. | 08/27/04 | Kitsap County's Respondent to Petitioner's Motion for Reconsideration | Respondent | 12 |
| 82. | 08/27/04 | Respondent to Intervener McCormick Land Company to Motion for Reconsideration by Suquamish Tribe, et al. | Intervener | 11 |
| 83. | 09/07/04 | Motion for Leave to File Reply Brief | Petitioner | 8 |
| 84. | 09/08/04 | Letter Regarding Motion for Reconsideration | Petitioner | 3 |
| 85. | 09/08/04 | Order Setting Date for Corrected Order on Reconsideration | CPSGMHB | 4 |
| 86. | 09/16/04 | Order on Reconsideration | CPSGMHB | 15 |

**TOTAL: 4509**

**MODIFIED INDEX -- EXHIBITS**

**Volume 8 continued:**

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|---|---|---|---|---|
| 87. | N/A | Buildable Lands Analysis 1995-1999 (Kitsap County August 2002) | Kitsap County | 113 |
| 88. | N/A | Kitsap Regional Coordinating Council – Kitsap Countywide Planning Policies 2001 | Kitsap County | 40 |

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|---|---|---|---|---|
| 89. | N/A | Kitsap County Comprehensive Plan Part I-A; Land use Plan, Amended June 10, 2002 | Kitsap County | 186 |
| 90. | N/A | South Kitsap Industrial Area (SKIA) Draft Appendix May 31, 2002 | Kitsap County | 304 |

**Volume 9:**

| | | | | |
|---|---|---|---|---|
| 91. | N/A | Framework Principles Appendix, Kitsap County Comprehensive Plan, May 7, 1998 | Kitsap County | 317 |
| 92. | N/A | Kitsap County Comprehensive Plan Part II: Capital Facilities Plan – May 7, 1999, Revised July 21, 1999 | Kitsap County | 61 |
| 93. | N/A | Ordinance No. #311-2003 | Kitsap County | 159 |
| 94. | N/A | South Kitsap UGA/ULID #6 Sub-Area Plan, Code Changes 12/8/2003 | Kitsap County | 67 |
| 95. | N/A | South Kitsap Industrial Area (S.K.I.A.) Sub-Area Plan December 8, 2003 | Kitsap County | 97 |
| 96. | N/A | South Kitsap Industrial Plan Development Regulations December 8, 2003 | Kitsap County | 30 |
| 97. | N/A | Final Kingston Sub-Area Plan, December 8, 2003 | Kitsap County | 86 |

**TOTAL: 1460**

**GRAND TOTAL: 5969**

**STATE OF WASHINGTON**
**THURSTON COUNTY SUPERIOR COURT**

| | |
|---|---|
| KITSAP COUNTY,<br><br>Petitioner<br><br>v.<br><br>CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD, et al,<br><br>Respondents | NO. 04-2-02138-1[1]<br><br>[CPSGMHB Underlying Case No. 04-3-0031c]<br><br>**INDEX and CERTIFICATION OF RECORD** |

## NOTE TO INDEX

The Index and Log of documents below represent those selected for the appellate record by Kitsap County, Futurewise, and Jerry Harless, pro se, parties in CPSGMHB Case No. 04-3-0031c. The tab numbers, while in numerical sequence by filing date with the Board, are not therefore in some instances sequential. All documents contained in this submittal are those chosen by the parties, and are in two 3-ring binders, labeled Volume 1/2 (Tab Numbers 1 through 28, Bates 00001-00724) and Volume 2/2 (Tab Numbers 30 through 68, Bates 00725-01523).

***1000 Friends/KCRP, et al v. Kitsap County***
***Case No. 04-3-0031c***
***(Includes Harless III – 04-3-0031)***

| | Date | Filing Title | Filed By | Pages |
|---|---|---|---|---|
| 1 | 12/28/04 | Petition for Review (04-3-0030) | Petitioner | 51 |
| 2 | 12/30/04 | Petition for Review (04-3-0031) | Petitioner | 6 |
| 5 | 01/05/05 | Notice of Hearing and Potential Consolidation | CPSGMHB | 10 |
| 6 | 01/13/05 | Notice of Association (1000 Friends) | Petitioner | 3 |

[1] This consolidated case includes:

- 04-2-02138-1 (Kitsap County v. CPSGMHB, et al)
- 04-2-02517-3 (Suquamish Tribe, et al v. CPSGMHB, et al)
- 05-2-01564-8 (Kitsap County v. CPGSMHB)
- 05-2-01678-4 (Futurewise, et al v. CPSGMHB, et al)

| | Date | Filing Title | Filed By | Pages |
|---|---|---|---|---|
| 7 | 01/28/05 | Preliminary Index to the Record | Respondent | 85 |
| 8 | 02/01/05 | Prehearing Order and Order of Consolidation | CPSGMHB | 11 |
| 9 | 02/15/05 | Motion to Supplement the Record | Petitioner | 14 |
| 10 | 02/17/05 | Motion to Appear Amicus Curiae (Overton Assoc., et al.) | Petitioner | 7 |
| 11 | 02/17/05 | Motion to Dismiss Legal Issues 5, 7 and 8/ Declaration of Opal Robertson | Respondent | 11 |
| 12 | 02/24/05 | Order to Supplement the Record | CPSGMHB | 2 |
| 13 | 02/28/05 | Kitsap Response to Pr. Harless' Motion to Supplement the Record | Respondent | 12 |
| | | EXHIBITS: | | |
| | | List of Exhibits | | 1 |
| | | Index #26616 | | 9 |
| | | Index #26938 | | 26 |
| | | Index #27370 (portion of) | | 20 |
| | | Index #27088 | | 5 |
| | | Index #27103 | | 29 |
| | | Index #27370 | | 26 |
| | | Index #27143 | | 26 |
| 15 | 03/07/05 | Pr. Harless Rebuttal of #15 above (hard copy) | Petitioner | 12 |
| 16 | 03/07/05 | Response to Bd's Order to Supplement Record | Respondent | 6 |
| 17 | 03/15/05 | Order on Motions, Dismissing Harless Petition, Ruling on Supplementation and Granting Amicus | CPSGMHB | 10 |
| 19 | 03/21/05 | Request for Reconsideration and Motion to Intervene (hard copy original) | Petitioner Harless | 13 |
| 20 | 03/21/05 | Order Granting Intervention and Shortening Time to Respond to Motion for Reconsideration | CPSGMHB | 5 |
| 22 | 03/29/05 | Response to Harless Motion for Reconsideration (original filed) | Respondent | 11 |
| 23 | 03/31/05 | Order on Reconsideration, Rescinding Dismissal of Harless and Amending Briefing Schedule | CPSGMHB | 11 |
| 24 | 04/04/05 | Intervenor Harless' Prehearing Brief | Intervenor Harless | 83 |
| 25 | 04/04/05 | Futurewise & KCRP's Prehearing Brief, Exhibit List + Exhibits | Petitioner Futurewise | 222 |
| 28 | 04/11/05 | Prehearing Brief of Legal Issue No. 6 | Petitioner | 59 |

| | Date | Filing Title | Filed By | Pages |
|---|---|---|---|---|
| | | | Harless | |
| 30 | 04/18/05 | Prehearing Brief, Declaration of David W. Nash, and C/S | Respondent | 256 |
| 31 | 04/18/05 | Prehearing Brief of Amici Curia – Overton, Alpine Evergreen & Olympic Property | Amici Curiae | 89 |
| 33 | 04/22/05 | Kitsap County's Prehearing Brief re Issue 6 | Respondent | 19 |
| 35 | 04/25/05 | Intervenor Harless' Reply Brief of Issues 2, 3 and 4 – hard copy, US Mail | Resp/Intvr | 19 |
| 37 | 04/26/05 | Futurewise & KCRP's Prehearing Reply Brief (orig. hard copy w/attachments) | Petitioners | 21 |
| 38 | 04/27/05 | Intervenor Harless' Reply Brief Regarding Issue 6 | Intervenor | 9 |
| 42 | 05/13/05 | Original hard copy Statement of Additional Authority | Respondent | 14 |
| 43 | 05/16/05 | Harless' Response to County Statement of Additional Authority | Intervenor Harless | 3 |
| 44 | 05/24/05 | E Transcript Delivery; print copy of E-transcript in red bucket file by ## in Files Rm. | Ct. Reporter | 79 |
| 45 | 06/08/05 | Original Transcript + Certifying Pages on E-Transcript – orig. in red bucket file #44 above | Ct. Reporter | 2 + original |
| 46 | 06/28/05 | **Final Decision & Order**<br><br>**30-day appeal period ends Thursday, July 28 – COB.** | CPSGMHB | 47 |
| 49 | 07/11/05 | Formal hard copy filing – Harless' Request for Reconsideration | Pet. Harless | 9 |
| 50 | 07/11/05 | FW & KCRP hard copy formal filing Motion for Reconsideration | Petitioners | 8 |
| 51 | 07/13/05 | Response of Amici to Motion for Reconsideration | Amici Respondent | 8 |
| 53 | 07/18/05 | Kitsap Co.'s Response to Motions for Reconsideration of FDO – hard copy/formal | Respondent | 9 |
| 54 | 07/25/05 | Order Denying Reconsideration | CPSGMHB | 6 |
| | | **APPEAL/LITIGATION BEGINS** | | |
| 57 | 08/12/05 | Kitsap County's Motion to Extend Compliance Deadline in 04331c – formal | Respondent | 4 |
| | | **Documents Requested by Petitioner Harless** | | |

| | Date | Filing Title | Filed By | Pages |
|---|---|---|---|---|
| 60. | 08/23/05 | Pet. Harless' Response to County's Motion to Extend Compliance Deadline – formal | Pet. Harless | 5 |
| 63. | 09/01/05 | Order Scheduling Consideration of Kitsap County's Motion to Extend Compliance Deadline | CPSGMHB | 4 |
| 65. | 09/21/05 | Kitsap County's Submittal of Proposed Work Plans | Respondent | 33 |
| 67. | 09/22/05 | Pet. Harless' and KCRP's Comments on County's Submittal of Proposed Work Plans | Pet. Harless and KCRP | 8 |
| 68. | [10/4/05] | **Addition of selected CORE DOCUMENTS, submitted by Respondent Kitsap County to CPSGMHB on February 17, 2005**<br>• Resolution No. 158-2004, Index 27441<br>• Provisions of Zoning Code referenced in Resolution 158-2004 [N/A]<br>• Ordinance No. 326-2004 amending Comp Plan and Zoning Map, Index 27334<br>• Ordinance No. 327-2004 amending County-Wide Planning Policy [N/A] | | |

I do hereby transmit and certify to the Thurston County Superior Court, c/o Betty J. Gould, Civil Clerk, the attached selected record and index of record for the above-captioned case.

Linda Kerr Stores

Linda Kerr Stores, Administrative Officer
Central Puget Sound Growth Management
Hearings Board
Dated: October 19, 2005

# APPENDIX B

EXCERPTS FROM KINGSTON SUBAREA PLAN

**Goal 3:** Strive to maintain (and where appropriate create) a diversity of housing opportunities for all incomes and ages in the Kingston community.

**Policy 3.1** Aim to provide appropriately zoned vacant land to accommodate the future needs for all types of housing, including single family, multi-family and manufactured.

**Project 3.1.1** Consider evaluating existing land use regulations and identifying measures to increase the variety of affordable housing types throughout Kingston. Examples of potential code revisions may include:

- A reduction in allowed single family lot sizes
- Expanded provisions to accommodate accessory dwelling units
- Broader allowance for duplex, triplex and fourplex housing types in existing single-family zoning districts
- Provision of incentives such as parking requirement reductions and expanded lot coverage for the inclusion of residential units in appropriately zoned mixed-use districts

**Goal 5:** Support the development and implementation of design guidelines which appropriately integrate new construction and redevelopment into Kingston while maintaining the special character of the community.

**Policy 5.1** Preserve the small town character of Kingston's commercial areas by implementing the adopted design guidelines for commercial development.

**Goal 6**: Preserve the small town character.

**Policy 6.1** Encourage contextually based, clustered single and multi-family residential development as a means of preserving open spaces and natural areas.

**Project 6.1.1** Encourage cluster development and open space design guidelines for residential development. The guidelines should strive to preserve the visual amenities that contribute to community character, and seek to preserve the existing native vegetation.

**Policy 6.2** Encourage the adoption of street development standards that functionally address public safety and level of service needs, while maintaining existing community character.

**Goal 11:** Promote infill development in areas that have pre-existing services and adequate reserve capacity.

> **Policy 11.1** Support new development in areas that have planned for the logical extensions of existing infrastructure. Partial provision of required infrastructure shall be avoided. In either case, new development shall not be located in a manner that compromises the integrity of protected natural systems.
>
> **Policy 11.2** Encourage residential densities to be based on an assessment of the land's natural capacity for development, the ability to provide required public facilities and services, and the maintenance of community character.
>
> **Policy 11.3** Consider such factors as surrounding uses, natural systems, adequacy of public facilities, parking and community character in determining areas that could accommodate redevelopment to higher densities.

**Goal 18:** Support the creation of an integrated network of multi-use trails and pedestrian pathways which provide access to destinations and businesses, links open space areas and recreational facilities, expands recreational opportunities for both residents and visitors, and takes advantage of Kingston's visual amenities.

**Goal 1:** Encourage most new growth to locate within designated Urban Growth Areas at higher densities.

> **Policy 1.1**: Kitsap County has adopted a target of 5 dwelling units per net acre as the average density for new development within designated Urban Growth Areas. This average density target is adopted as a means of using land more efficiently, providing services and facilities at lower public costs, encouraging use of public transit, and encouraging more affordable housing.

**Goal 2**: Provide guidelines and incentives to encourage higher density development that is appropriate in scale and design and enhances community livability.

> **Policy 2.1**: Where densities are expressed as a range on the Comprehensive Plan Land Use Map and/or in the Kitsap County zoning code, the lower end of the density range should be considered as a minimum density for new development within urban residential classifications. All new residential development within the Urban Growth Area should achieve these minimum densities as consistent with adopted land use maps to recognize the presence of critical areas--including streams, wetlands, fish and wildlife habitat, geologically hazardous areas, floodprone areas and aquifer recharge areas--and to recognize the existence of neighborhoods or subdivisions which have little vacant land and little or no opportunity for infill or redevelopment.
>
> **Policy 2.2:** Density incentives should be developed and applied in the Urban Growth Area to encourage the provision of affordable housing, significant open space, community amenities, transportation-oriented planning and high quality

design.

**Policy 2.3:** Kitsap County should use the Land Capacity Monitoring and Evaluation Program established to implement Comprehensive Plan policy UGA-5? as a means to identify any pattern of significant under-building within various residential designations of the sub-area. In the event that development is not achieving established target densities, a strategy and program for remedying any regulatory problems inhibiting achievement of established targets will be identified and developed. Failure to achieve target densities shall not be used as a basis for amending the UGA until such program has been implemented.

**Policy 2.4**: A system of incentives should be developed to make small, vacant parcels within urban growth areas more attractive for development at higher densities.

**Policy 2.5**: The Kitsap County Zoning Code will allow for the approval of accessory dwellings within each residential zone.

**Goal 4:** Provide public services and capital facilities to support planned growth.

**Goal 5:** Encourage infill developments on vacant land within UGAs that have been bypassed in the development process.

**Policy 5.1**: Following the adoption and initial implementation of this Plan, Kitsap County should encourage innovative, high-quality infill development and redevelopment in existing developed areas within the Urban Growth Area.
Possible approaches may include a variety of regulatory, incentive and program strategies. Guidelines should address the following issues: a) preservation of historic and natural characteristics of neighborhoods and sites; b) provision of community space, pedestrian mobility and safety; c) creation of usable open spaces, community facilities and non-motorized access; d) design variety through lot clustering, flexible setback requirements and mixed attached and detached housing types; and e) design variations in multi-family buildings such as variations in facades, roof lines and other building design features.

**Goal 9:** Focus commercial growth within Urban Growth Areas where the County's future population growth will be guided and where public services and facilities will be focused.

**Policy 9.1:** Kitsap County should designate sufficient land for anticipated commercial land uses on its Comprehensive Plan Land Use Map. Designation of new commercial areas should consider county-wide population and employment forecasts and the local needs of the surrounding community.

**Goal 11:** Commercial land uses should be focused in defined areas and minimize future strip commercial development.

**Policy 11.1:** Strip commercial developments shown on the Comprehensive Plan Land Use Map along major roads and highways shall not be extended; infill in these areas will be encouraged.

**Policy 11.2:** No new strip commercial developments shall be permitted along major or secondary routes.

**Policy 12.1**: Commercial areas should be compact to encourage pedestrian and non-motorized travel and transit use.

**Goal 16**: Encourage mixed-use development including retail, professional offices, personal services and high-density residential in the form of centers at selected locations within the urban area.

**Goal 17**: Encourage industrial activities and their related land uses as a means to create new jobs and improve the overall tax base of the county.

**Policy 17.1:** Most future employment growth should be accommodated in the designated Urban Growth Area. Existing business and industrial activities in the rural area may continue but should not be expanded. Limited new or expanded business and industrial activities may be permitted within defined rural Villages, Rural Communities or Rural Industrial Areas designed in the Comprehensive Plan as appropriate for limited and contained growth, infill and redevelopment.

**Goal 18:** Sufficient land area for future industrial use should be identified and protected.

**Goal 2**: Support the protection of sensitive areas and natural systems.

**Policy 2.2:** Acknowledge that Kingston will accommodate increased urban densities. The cumulative effect of these increases may require more environmental protection strategies. Ensure that the unique environmental systems within the Kingston UGA are adequately protected by appropriate regulations. In evaluating existing Endangered Species Act (ESA) regulations, place specific emphasis on "Urban Restricted" zones to achieve adequate environmental protection.

**Policy 2.3**: Identify the critical area designations in the Kingston UGA and surrounding area as new information becomes available.

## EXCERPTS FROM ULID #6 SUBAREA PLAN

**Goal 1:** To identify and plan, through collaborative inter-jurisdictional processes, to accommodate 6,400 of the additional urban growth projected to occur in South Kitsap County for the period between 2013 to 2017.

**Policy 1.3:** Establish mandatory master planning requirements to ensure comprehensive and coordinated development of land within each zone located within the sub-area. Ensure that mandatory master planning provisions address the following:

- The provision of an interconnected and integrated network of parks, and open space and recreational areas;
- The clustering of new residential development in areas not subject to development constraints;
- The provision of integrated transportation system improvements; and
- The provision of integrated water and wastewater system improvements and stormwater management facilities.

**Policy 1.4:** Promote integration of housing and commercial development in locations where combining such uses would be mutually beneficial.

**Policy 1.5:** Assure that capital facilities and levels of service do not fall below adopted standards or guidelines. If this occurs, reassess this land use element to determine whether changes in designations or other aspects of this element are warranted.

**Policy 1.6:** Monitor development to determine whether the assumptions of this sub-area plan regarding the rate, nature and location of development remain valid. In particular, monitor development in the urban low and urban medium residential areas to determine whether the assumption that such areas will develop between the minimum and mid-range densities remains valid. If development departs substantially from this assumption, reassess the Land Use Map and modify the goals, policies and implementing strategies as needed.

**Goal 2:** To provide a planned, livable community that is an attractive place to live, work and play.

**Policy 2.1:** Develop an urban village center with gathering places and convenience shopping, within walking and biking distance of residences and places of employment.

**Policy 2.2:** Encourage mixed-use development, especially in and around the urban village center.

**Policy 2.3:** Locate higher intensity uses and high density housing in areas of the ULID #6 most suitable for such uses, based on consideration of critical areas, proximity to the urban village center and location of transportation corridors.

**Policy 2.4:** Promote a variety of housing choices and opportunities through increased density and innovative design including zero lot line and small lot development, attached units, apartments and condominiums as well as traditional single-family housing.

**Policy 2.7:** Ensure that each neighborhood is provided with pocket parks, natural open spaces or other types of meaningful open space for enjoyment and/or recreation.

**Policy 2.8:** Provides sites, as needed, for community schools.

**Goal 3:** To provide flexible development regulations that allow infrastructure efficiency to be maximized.

**Policy 3.1:** Promote maximum utilization of existing sewer infrastructure.

**Policy 3.2:** Support the Coordinated Water Service Plan adopted by the City of Bremerton and the City of Port Orchard to serve this area.

**Policy 3.3:** Support expansion of the existing telecommunications network located in Old Clifton Road to serve all planned uses, including commercial and business uses.

**Policy 3.4:** Support the development of multi-modal transportation uses to serve this urban area, including park-and-ride facilities, transit and biking, as appropriate.

**Policy 3.5:** Support the use of County Road Improvement Districts to develop additional urban road infrastructure, if applicable.

**Goal 4:** To provide an appropriate mix of urban residential and commercial lands to conveniently

**Policy 4.1:** Create a range of housing opportunities in the sub-area that further the objectives of the Housing Element of the Comprehensive Plan.

**Policy 4.2:** Promote the development of identifiable residential neighborhoods and convenience shopping areas through the encouragement of more compact development patterns, the use of shared design and landscaping characteristics, and the development of landmarks.

**Policy 4.3:** Locate higher density housing in areas of the sub-area most suitable for such uses, based on the consideration of critical areas, public utilities and services, and transportation facilities as well as proximity to commercial and business park areas.

**Policy 4.6:** Encourage appropriately located convenience commercial development of a type and scale to serve nearby residents as well as to reduce vehicle trips out of the sub-area.

**Goal 5:** To develop a comprehensive open space and trails system within the sub-area which protects the natural environment, provides passive recreational opportunities, and is designed to link neighborhoods with significant open spaces, parks, neighborhood shopping and employment areas.

**Goal 6:** To assure that new urban residential and commercial development is adequately buffered from rural areas, contributes to identifiable neighborhoods, and incorporates quality building design and landscape features.

**Policy 6.3:** Ensure that neighborhood retail and commercial developments are designed and developed to primarily serve the needs of those who live in the sub-area and not a regional clientele.

**Policy 6.4:** Prior to commercial, multi-family and business park development, develop design guidelines to address the compatibility of these uses, enhance neighborhood character, and to promote pedestrian friendly development.

## 5.0 THE ENVIRONMENTAL PROTECTION ELEMENT

**Goal 1:** To protect and sustain the sub-area's critical areas for present and future generations.

**Policy 1.3:** Employ a wide range of initiatives to protect plant and animal habitat areas within the sub-area, including the following:

- Cluster development;
- Mandatory master planning for each zone within the sub-area;
- On-site density transfers;
- Donation of conservation easements to qualified non-profit nature conservancy corporations (i.e., land trusts);
- Use "best available science" in developing regulations;
- Require the use of best management practices (BMPs) as a standard SEPA mitigation measure for project level development applications.

**Policy 1.6:** Require clustering of residential development to protect key plant and animal habitat areas.

## 6.0 THE TRANSPORTATION ELEMENT

**Goal 1:** To provide an adequate system of arterials and collection streets which connect the sub-area and adjacent development areas to the state highway system and adjacent arterials.

**Policy 1.3:** Develop a collector road system to provide for access and circulation between the various developments in and adjacent to the sub-area. Design the collector road system to reduce the potential need for local traffic to use the arterials.

**Policy 1.4:** Wherever possible, require that site access be to arterials and collectors. Minimize through-traffic on local residential streets.

**Policy 1.5:** Implement necessary transportation improvements as development in the subarea occurs consistent with the County's Concurrency and SEPA requirements.

**Goal 2:** Work to decrease the number of single-occupant vehicle (SOV) trips generated within the planning area, and support a mix of land uses to help internalize traffic within the sub-area and to provide a relatively balanced use of transportation capacity during peak travel periods.

**Policy 2.1:** Require that internal streets make provision for non-motorized transportation opportunities, consistent with Kitsap County design standards or approved variances.

**Policy 2.5:** Support development of park-and-ride lots to serve some of the transportation needs of the sub-area.

**Policy 2.6:** Work with Kitsap Transit to provide transit service to the sub-area as it develops.

### 7.3 GOAL AND POLICIES

**Goal 1:** To provide adequate capital facilities and services to the sub-area to address current needs and future development.

**Policy 1.1:** Coordinate with public facility and service providers on land use decisions and future land use project permitting, consistent with the availability of concurrent public facilities and services provided by other service providers.

**Policy 1.2:** Reassess the sub-area land use plan if facilities cannot be provided in a timely manner to serve the projected growth.

**Policy 1.3:** Monitor the status of CIP projects to ensure that adequate planned facility capacity improvements remain consistent with those referenced and adopted in the CFP as well other service providers' capital facility plans and programs.

**Policy 1.8:** Address the phasing of future growth within the sub-area based on the availability of adequate public facilities and services, especially those related to the provision of potable water supplies.

## EXCERPTS FROM SKIA SUBAREA PLAN

2.3.1 Goals

2. To promote and support a healthy, diverse economy that provides for a strong and diverse tax base, encourages expansion of business, industrial and employment opportunities to attract new industry to Kitsap County, and fosters new industry that is environmentally responsible and consistent with Kitsap County's Comprehensive Plan and with this sub-area plan.

6. To support and coordinate economic expansion and diversification through the development of capital facilities, multi-modal transportation and urban services.

7. To ensure that economic development will be concurrent with the existing capacity of required capital facilities.

8. To utilize the land capacity and strategic location of the South Kitsap Industrial Area and Bremerton National Airport to attract new industrial employers to the County and allow existing industrial employers to expand.

10. To provide by means of all of the above goals, to provide a diverse mix and appropriate range of industrial and business park uses in the South Kitsap Industrial Area that will provide living wage jobs.

2.3.2 Policies

2. Kitsap County and SKIA property owners will work, and will encourage the Cities of Bremerton and Port Orchard to work, with the KREDC in actively recruiting new industries to locate within SKIA and encouraging existing industries to expand their business within SKIA.

3. Kitsap County will allocate both financial and staff resources for long range economic development and will share equitably in the cost and revenues of public improvements necessitated by new economic development in SKIA.

6. The review and approval of master planned development within SKIA will include adequate technology infrastructure in order to attract and retain high technology firms.

2.3.3 Performance Standards

1. Development projects will strive to meet the following guidelines:

   a. They will provide primary jobs, or a combination of primary jobs, with secondary jobs as needed, directly supporting them.
   b. At least fifty percent (50%) of the jobs created by an employer shall pay the average or higher than average annual covered wage for Kitsap County (see definitions section at the beginning of this document).

2. Master plans shall include a technology infrastructure component depicting the type and siting of technology infrastructure. These plans shall show plans for infrastructure including fiber optic or other high-speed data links to regional technology infrastructure and to other technology infrastructure within SKIA. Plans shall also demonstrate a provision for reserve capacity and/or a potential for future expansion of technological capability (i.e. reserve space inside planned conduits). Technology-related infrastructure for SKIA shall be in accordance with Kitsap County technology infrastructure goals, policies and standards, as adopted.

3. Those SKIA properties not required to Master Plan must include technology infrastructure plans meeting the requirements of Section 2 (above) of this chapter as a component of the site plan review process or conditional use process associated with individual development permits.

3.4.1 Goals

2. To provide sufficient land for industrial and business uses to meet projected employment demand and economic development goals.

3. To accommodate and support the development of attractive and functional industrial and business uses by addressing the provision of adequate, timely and efficient infrastructure, wastewater, storm water and potable water facilities and utilities.

3.4.2 Policies

2. Kitsap County will support and assist the Port of Bremerton, the Cities of Bremerton and Port Orchard and landowners in the provision of basic urban infrastructure, sewers, water, stormwater and transportation facilities to serve the South Kitsap Industrial Area.

3. Business/industrial developments within SKIA shall ensure consistency with the goals of the SKIA Sub-Area Plan and the SKIA Conceptual Development Plan.

5. All applications concerning master planning or development of properties located within or immediately adjacent to the SKIA UGA boundaries (as designated on Figure 3, page 30) shall require notification of all other properties within SKIA Plan sub-area boundaries and the Cities of Bremerton and Port Orchard. The following shall apply:

   a. For the purpose of development applications, notification shall be based on the outer property boundary of the SKIA Sub-Area. Accordingly, all owners of properties located either within the SKIA Sub-Area or within 400 feet of the SKIA Sub-Area outer boundary shall receive notification of master plan or development applications.

   b. The executive of the Port of Bremerton or their designee shall review, in a timely manner, said development applications within the airport zone of influence for compliance with FAA regulations pertaining to airport operations.

6. Retail uses, except those in service to primary uses, will not be permitted.

3.6.1 Industrial/Airport Areas Delineated by the 1998 Comprehensive Plan

Properties within this area will have the option of three land use processes for future development.

- Within six months of adoption of the SKIA Plan, landowners with properties meeting specific criteria (infrastructure availability and property condition) may propose lands as "ready for development" for review as an administrative decision. If approved, these lands should not require any further land use approvals, but will be subject to Kitsap County Code and SEPA during application for construction permits; or
- Within six months of adoption of the SKIA Plan, properties meeting specific criteria will be identified that may utilize the Industrial Park process. A Binding Site Plan may be developed concurrently; or

- At any time after adoption of the SKIA Plan, property owners may utilize the Master Plan process (Section 3.6.4). A Binding Site Plan may be developed concurrently.

3.6.2 UJPA Lands East and South of the Bremerton National Airport

To ensure efficient and cost-effective provision of infrastructure and appropriate environmental protections, development within these UJPA lands must be consistent with an approved Master Plan (Section 3.6.4)

3.6.3 UJPA Lands Northeast of the Bremerton National Airport

Due to the fragmented nature of property ownership in this area and their proximity to existing transportation infrastructure, development of properties within these UJPA lands must be consistent with one of the following land use processes:

- Site Plan Review or Conditional Use Permit as required by their zone; or
- Industrial Park with concurrent Binding Site Plan; or
- Master Plan (Section 3.6.4) with concurrent Binding Site Plan

3.6.4 Master Plan

Development of the SKIA Sub-Area as a whole will be coordinated through land use processes including the use of master planning. The purpose of this tool is to ensure compatibility between developments via individual master plans.
Individual Master Plans, their elements, analyses, plans, and designs shall extend to the boundaries of all sub-basins that comprise any portion of the parcel or parcels upon which the development is planned to occur. In cases where Master Plan areas overlap property boundaries, property owners should work together to ensure appropriate master planning.

Because Master Plans may be approved some time in advance of related development applications, updates to existing Master Plans may also be required at the development stage, based on changes in conditions or regulations since the last Master Plan update. Master Plans must identify a reasonable timeframe for development including the timeframe for availability of viable infrastructure.

9.2.1.1 Goals

1. To encourage development of an efficient multi-modal (roadways, airports, freight mobility, non-motorized) transportation system based on local, countywide and regional priorities in coordination with existing comprehensive plans.

9.2.1.2 Policies

T-1 Use the transportation planning process to identify current and future transportation needs and identify transportation corridors.

T-2 Work with the Kitsap County Departments of Community Development and Public Works to establish the transportation element of Master Plans in consideration of:

- Implementation of the roadway design functions shown on the County's transportation plan and acquisition of needed right-of-way.
- The development of land use and transportation links.
- Encouraging multi-modal connections between major building/activity areas, such as pedestrian linkages between parking lots and adjacent land uses.

9.2.2.1 Goals

2. To establish minimum levels of service standards for transportation facilities in accordance with the requirements of the Growth Management Act.

3. To manage access to the transportation system to conserve existing capacity, reduce congestion and improve mobility.

4. To protect and enhance freight accessibility.

5. To provide a transportation system that will support economic development in the sub-area.

**17.325.070 Lot coverage.**

Maximum lot coverage by impervious surface shall not exceed fifty percent.
(Ord. 216-1998 § 4 (part), 1998)

**17.325.080 Signs.**

Signs shall be permitted according to the provisions of Chapter 17.445.
(Ord. 216-1998 § 4 (part), 1998)

**17.325.090 Off-street parking.**

Off-street parking shall be provided according to the provisions of Chapter 17.435.
(Ord. 216-1998 § 4 (part), 1998)

**17.325.100 Other provisions.**

For other provisions, *see* Chapters 17.430 and 17.455.
(Ord. 216-1998 § 4 (part), 1998)

## Chapter 17.330

## URBAN LOW RESIDENTIAL ZONE (UL)

**Sections:**



**17.330.010 Purpose.**

The intent of this zone is to recognize, maintain, and protect urban low density residential areas and establish urban densities where a full range of community services and facilities are present or will be present at the time of development in accordance with the urban growth areas as depicted on the Comprehensive Plan. This zone is also intended to create energy-efficient residential areas which are capable of allowing the provision of community services in a more economical manner; and provide for additional related uses such as schools, parks, and utility uses necessary to serve immediate residential areas.
(Ord. 216-1998 § 4 (part), 1998)

**17.330.020 Permitted uses.**

The following uses are permitted:

A. Single-family detached dwellings, provided, mobile homes as defined in Chapter 17.110 shall not be allowed, except in approved mobile home parks;

B. Publicly owned recreational facilities, services, parks, and playgrounds;

C. Agricultural uses, including accessory buildings related to such uses and activities as defined in Chapter 17.110, and subject to the provisions of Chapter 17.430;

D. Forestry, including accessory buildings related to such uses and activities as defined in Chapter 17.110;

E. Accessory uses and structures normal to a residential environment, subject to the provisions of subsection (X) of Section 17.430.020;

F. Duplexes on double the minimum lot area required for the zone;

G. Accessory dwelling unit and accessory living quarters, subject to the provisions of Chapter 17.430; and

H. Residential care facility located within an existing structure.

(Ord. 292 (2002) § 4, 2002: Ord. 216-1998 § 4 (part), 1998)

**17.330.030 Conditional uses.**

The following are the conditional uses in the urban low residential (UL) zone in accordance with the provisions of Chapter 17.420:

A. Cemeteries and/or mausoleums, crematories, columbaria, and mortuaries, provided that no mortuary or crematorium is within one hundred feet of a boundary street, or where no street borders the cemetery, within two hundred feet of a lot in a residential zone, subject to the provisions of Chapter 17.430;

B. Places of worship, subject to the provisions of Chapter 17.430;

C. Public or private schools, subject to the provisions of Chapter 17.430;

D. Private recreational facilities such as: marinas, country clubs and golf courses (including conference centers when associated with the aforementioned uses), but not including such intensive commercial recreation uses as a golf driving range (unless within a golf course), race track, amusement park, or gun club;

E. Day-care centers, subject to the provisions of Chapter 17.430;

F. Public facilities and electric power and natural gas utility facilities, including fire stations, libraries, museums, substations, ferry terminals, commuter park-and-ride lots, and post offices; but not including storage or repair yards, warehouses, or similar uses;

G. Single-family attached, including townhouses;

H. Mobile home parks, subject to the density limitations of the zone;

I. Multi-family projects, subject to the density limitations of the zone; and

J. Community buildings, social halls, lodges, clubs, meeting places.

(Ord. 216-1998 § 4 (part), 1998)

**17.330.040 Uses permitted after site plan review as set forth in Chapter 17.410.**

A Home business, subject to the provisions of Chapter 17.430;

B. Performance based developments, subject to the provisions of Chapter 17.425;

C. Temporary offices and model homes, subject to the provisions of Chapter 17.455;

D. Bed and breakfast house as defined in Chapter 17.110; and

E. Residential care facility not located within an existing structure.

(Ord. 216-1998 § 4 (part), 1998)

**17.330.050 Height regulations.**

No building or structure shall be hereafter erected, enlarged, or structurally altered to exceed thirty-five feet in height.

Areas governed by Sub-Area Plans. Within areas subject to specific sub-area plans, a greater height may be allowed upon review/approval by the director upon recommendation from the fire marshall/fire district, provided that the net result is an overall increase in areas or other public amenities, or the design results in a more creative or efficient use of land.

(Ord. 311 (2003) [Attachment 7 (part)], 2003: Ord. 216-1998 § 4 (part), 1998)

**17.330.060 Lot requirements.**

A. The minimum lot requirements shall be as shown in Urban Low Residential Zone Lot Requirements Table 17.330.060(A).

B. Development within this zone is subject to a minimum density requirement of 5 units per acre. Residential development that does not meet this density must submit a preplan for future property division that demonstrates that future re-division to achieve the minimum density is feasible, and meet the requirements outlined in Section 17.315.090.

C. Density Limit for the South Kitsap UGA/ULID #6 Sub-Area. Pursuant to the approved South Kitsap UGA/ULID #6 Sub-Area Plan, the maximum number of residential units permitted in the sub-area is 4,172, until such time as a further population allocation is made to the sub-area. All residential development within the sub-area located in the UL zone is subject to this density limitation. To ensure that the density limit for the sub-area is not exceeded, the director shall use the county's land information system (LIS) to monitor the number of dwelling units remaining and available for development within the sub-area.

**URBAN LOW RESIDENTIAL ZONE LOT REQUIREMENTS TABLE 17.330.060(A)**

| Classification | Density (Du/Acre) | | Minimum Lot Area | Minimum Lot Width | Minimum Lot Depth | Front Yard | Side Yard | Opposite Side Yard | Rear Yard |
|---|---|---|---|---|---|---|---|---|---|
| UL | Min 5 | Max 9 | None | 40 | 60 | 20 | 5 | 5 | 5 |

(Ord. 311 (2003) [Attachment 7 (part)], 2003: Ord. 226-1998 § 2, 1998; Ord. 222-1998 § 2, 1998; Ord. 216-1998 § 4 (part), 1998)

**17.330.070 Signs.**

Signs shall be permitted according to the provisions of Chapter 17.445.
(Ord. 216-1998 § 4 (part), 1998)

**17.330.080 Off-street parking.**

Off-street parking shall be provided according to the provisions of Chapter 17.435.
(Ord. 216-1998 § 4 (part), 1998)

**17.330.090 Other provisions.**

A. Generally. *See* Chapters 17.430 and 17.455.

B. Master Planning Requirements for the South Kitsap UGA/ULID #6 Sub-Area. Consistent with Chapter 17.428 of this code, prior to any new development within an area zoned UL which is also designated for master planning in an approved sub-area plan, a master plan shall be prepared for the entirety of the zone which is contiguous with the area proposed for new development, provided that the director may either increase or decrease the area within the sub-area that will be included in the master plan in order to maximize the efficiency of the process and assure coordination with areas that may be affected by the proposed new developments.

If the subject zone exists elsewhere within the sub-area, and is not contiguous to the area proposed for new development, it is not required that those non-contiguous same-zoned lands be included in the subject master plan.
(Ord. 311 (2003) [Attachment 7 (part)], 2003: Ord. 216-1998 § 4 (part), 1998)

## Chapter 17.335

## URBAN CLUSTER RESIDENTIAL ZONE (UCR)

**Sections:**



**17.335.010 Purpose.**

The Urban Cluster Residential (UCR) zone is intended to encourage flexible land uses, recognizing that exact locations of uses must be based on the location of critical areas, transportation corridors, community needs and market conditions. The intent is to give flexibility to locate urban residential development

**Explanatory Notes – Table 17.335.020.**

1. Subject to Chapter 17.425
2. Subject to Chapter 17.430.
3. Subject to Chapter 17.430.
4. Subject to Chapter 17.430.
5. Subject to Chapter 17.455.
6. Subject to Chapter 17.430.
7. Subject to Chapter 17.455.
8. These uses are allowed only within a commercial center limited in size and scale (e.g., an intersection or "corner" development).
9. Subject to Chapter 17.430.

(Ord. 311 (2003) [Attachment 7 (part)], 2003)

**17.335.030 Densities generally – Density limit for the South Kitsap UGA/ULID #6 Sub-Area.**

A. Densities.

1. Minimum: 5 units/gross acre; and
2. Maximum: 9 units/gross acre.

B. Density Limit for the South Kitsap UGA/ULID #6 Sub-Area. Pursuant to the approved South Kitsap UGA/ULID #6 Sub-Area Plan, the maximum number of residential units permitted in the sub-area is 4,172, until such time as a further population allocation is made to the sub-area. All residential development within the sub-area located in the UCR zone is subject to this density limitation. To ensure that the density limit for the sub-area is not exceeded, the director shall use the county's land information system (LIS) to monitor the number of dwelling units remaining and available for development within the sub-area.

(Ord. 311 (2003) [Attachment 7 (part)], 2003)

**17.335.040 Lot requirements.**

A. Minimum Lot Sizes. None.

B. Yard Requirements – Single-Family, Duplex and Townhouse Units.

1. Front yard – 10 feet.
2. Side and rear yard – 5 feet. Zero-lot line developments may be approved with zero set-backs.
3. No setbacks are required between interior walls of duplex and townhouse units.

C. Yard Requirements – Multi-Family Units.

1. Front yard – 10 feet if the opposite side of the street front is a residential use, no setback if the opposite side of the street is developed with a nonresidential use.
2. Side and rear yard – 5 feet.

(Ord. 311 (2003) [Attachment 7 (part)], 2003)

**17.335.050 Height regulations.**

No building or structure shall be hereafter erected, enlarged, or structurally altered to exceed thirty-five feet in height.

(Ord. 311 (2003) [Attachment 7 (part)], 2003)

**17.335.060 Signs.**

Signs shall be permitted according to the provisions of Chapter 17.445.

(Ord. 311 (2003) [Attachment 7 (part)], 2003)

**17.335.070 Off-street parking.**

Off-Street parking shall be provided according to the provisions of Chapter 17.435.

(Ord. 311 (2003) [Attachment 7 (part)], 2003)

**17.335.080 Other provisions.**

A. *See* Chapters 17.385, 17.430 and 17.455.

B. All development shall comply with the standards in the Kitsap County Storm Water Management Ordinance, Title 12 of this code, and the Kitsap County Critical Areas Ordinance, Title 19 of this code, as they now exist or are later amended, as well as all SEPA mitigation requirements.

C. Master Planning Requirements. Prior to any new development within an area zoned Urban Cluster Residential (UCR) which is also designated for master planning in an approved sub-area plan, a master plan shall be prepared for the entirety of the zone which is contiguous with the area proposed for new development, provided that the director may

either increase or decrease the area within the sub-area that will be included in the master plan in order to maximize the efficiency of the process and assure coordination with areas that may be affected by the proposed new development. If the subject zone exists elsewhere within the sub-area, and is not contiguous to the area proposed for new development, it is not required that those non-contiguous same-zoned lands be included in the subject master plan.
(Ord. 311 (2003) [Attachment 7 (part)], 2003)

## Chapter 17.340

## URBAN MEDIUM RESIDENTIAL ZONE (UM)

**Sections:**



### 17.340.010 Purpose.

This zone is intended to provide for higher densities where a full range of community services and facilities are present or will be present at the time of development, and to create energy-efficient residential areas by allowing common wall construction, as well as to facilitate residential development which utilizes energy-efficient design.
(Ord. 250-2000 § 3 (part), 2000: Ord. 216-1998 § 4 (part), 1998)

### 17.340.020 Permitted uses.[1]

The following uses are permitted:

A. Single-family attached and detached, provided, mobile homes as defined in Chapter 17.110, shall not be allowed, except in approved mobile home parks;

B. Multi-family, provided, they meet the density requirements;

C. Publicly owned recreational facilities, services, parks, and playgrounds;

D. Agricultural uses, including any accessory buildings related to such uses and activities as defined in Chapter 17.110, and subject to the provisions of Chapter 17.430;

E. Forestry, including any accessory buildings related to such uses and activities as defined in Chapter 17.110;

F. Accessory uses and structures normal to a residential environment, subject to the provisions of subsection (X) of Section 17.430.020;

G. Accessory dwelling unit and accessory living quarters, subject to the provisions of Chapter 17.430; and

H. Residential care facility located in an existing structure.
(Ord. 292 (2002) § 5, 2002: Ord. 250-2000 § 3 (part), 2000: Ord. 216-1998 § 4 (part), 1998)

### 17.340.030 Conditional uses.[1]

The following are the conditional uses in the urban medium residential (UM) zone in accordance with the provisions of Chapter 17.420:

A. Cemeteries and/or mausoleums, crematories, columbaria, and mortuaries within cemeteries, provided that no mortuary or crematorium is within one hundred feet of a boundary street, or where no street borders the cemetery, within two hundred (200) feet of a lot in a residential zone, subject to the provisions of Chapter 17.430;

B. Places of worship;

1 The *Design Standards for the Community of Kingston* sets forth policies and regulations for properties within the downtown area of Kingston. All development within this area must be consistent with these standards. A copy of the *Design Standards for the Community of Kingston* may be referred to in the office of the clerk of the board of county commissioners.

C. Public or private schools, subject to the provisions of Chapter 17.430;

D. Private recreational facilities, such as country clubs and golf courses, but not including such intensive commercial recreation uses as a golf driving range (unless within a golf course), race track, amusement park, or gun club;

E. Day-care centers, subject to the provisions of Chapter 17.430;

F. Public facilities and electric power and natural gas utility facilities, including fire stations, libraries, museums, substations, ferry terminals, commuter park-and-ride lots, and post offices; but not including storage or repair yards, warehouses, or similar uses;

G. Mobile home parks, subject to the density limitations of the zone; and

H. Congregate care facility.

(Ord. 250-2000 § 3 (part), 2000: Ord. 216-1998 § 4 (part), 1998)

### 17.340.040 Uses permitted after site plan review as set forth in Chapter 17.410.[1]

A Home business, subject to the provisions of Chapter 17.430;

B. Performance based development, subject to the provisions of Chapter 17.425;

C. Temporary offices and model homes, subject to the provisions of Chapter 17.455;

D. Bed and breakfast house as defined in Chapter 17.110; and

E. Residential care facility not located in an existing structure.

(Ord. 250-2000 § 3 (part), 2000: Ord. 216-1998 § 4 (part), 1998)

### 17.340.050 Height regulations.[1]

No building or structure shall be hereafter erected, enlarged, or structurally altered to exceed thirty-five feet in height.

Areas governed by Sub-Area Plans. Within areas subject to specific sub-area plans, a greater height may be allowed upon review/approval by the director upon recommendation from the fire marshall/fire district, provided that the net result is an overall increase in areas or other public amenities, or the design results in a more creative or efficient use of land.

(Ord. 311 (2003) [Attachment 7 (part)], 2003: Ord. 250-2000 § 3 (part), 2000: Ord. 216-1998 § 4 (part), 1998)

### 17.340.060 Lot requirements – Density limitations.[1]

A. Minimum Lot Requirements: None.

B. Density Limit for the South Kitsap UGA/ULID #6 Sub-Area. Pursuant to the approved South Kitsap UGA/ULID #6 Sub-Area Plan, the maximum number of residential units permitted in the sub-area is 4,172, until such time as a further population allocation is made to the sub-area. All residential development within the sub-area located in the UM zone is subject to this density limitation. To ensure that the density limit for the sub-area is not exceeded, the director shall use the county's land information system (LIS) to monitor the number of dwelling units remaining and available for development within the sub-area.

(Ord. 311 (2003) [Attachment 7 (part)], 2003: Ord. 250-2000 § 3 (part), 2000: Ord. 216-1998 § 4 (part), 1998)

### 17.340.070 Signs.[1]

Signs shall be permitted according to the provisions of Chapter 17.445.

(Ord. 250-2000 § 3 (part), 2000: Ord. 216-1998 § 4 (part), 1998)

### 17.340.080 Off-street parking.[1]

Off-street parking shall be provided according to the provisions of Chapter 17.435.

(Ord. 250-2000 § 3 (part), 2000: Ord. 216-1998 § 4 (part), 1998)

1 The *Design Standards for the Community of Kingston* sets forth policies and regulations for properties within the downtown area of Kingston. All development within this area must be consistent with these standards. A copy of the *Design Standards for the Community of Kingston* may be referred to in the office of the clerk of the board of county commissioners.

### 17.340.090 Other provisions.

A. See Chapters 17.430 and 17.455.

B. Master Planning Requirements. Prior to any new development within an area zoned Urban Medium (UM) which is also designated for master planning in an approved sub-area plan, a master plan shall be prepared for the entirety of the zone which is contiguous with the area proposed for new development, provided that the director may either increase or decrease the area within the sub-area that will be included in the master plan in order to maximize the efficiency of the process and assure coordination with areas that may be affected by the proposed new development. If the subject zone exists elsewhere within the sub-area, and is not contiguous to the area proposed for new development, it is not required that those non-contiguous same-zoned lands be included in the subject master plan.

(Ord. 311 (2003) [Attachment 7 (part)], 2003: Ord. 250-2000 § 3 (part), 2000: Ord. 216-1998 § 4 (part), 1998)

## Chapter 17.350

## URBAN HIGH RESIDENTIAL ZONES (UH)

**Sections:**



### 17.350.010 Purpose.

This zone is intended to provide for multiple-family residential and professional office development based upon compatibility with surrounding land uses. The primary use of this zone is intended to be high density residential. Professional office use is intended to compliment and support the residential use within the zone and be consistent with, and in conjunction with, residential development. It is intended that office developments within these zones will be of a higher standard in recognition of their residential setting. The following factors will be considered in the application of one of these zones to a particular site: proximity to major streets and the available capacity of these streets, availability of public water and sewer, vehicular and pedestrian traffic circulation in the area, proximity to commercial services and proximity to public open space and recreation opportunities. Development within these zones will be reviewed to ensure compatibility with adjacent uses including such considerations as privacy, noise, lighting and design.

(Ord. 216-1998 § 4 (part), 1998)

### 17.350.020 Uses.

[Table 17.350.020 follows on the next page]

**17.350.100 Other provisions.**

For other provisions, *see* Chapters 17.430 and 17.455.

(Ord. 216-1998 § 4 (part), 1998)

## Chapter 17.351

## MULTI-FAMILY DEVELOPMENT – DESIGN CRITERIA

**Sections:**



**17.351.010 Purposes and intent**

The general purposes of these design criteria are as follows:

A. To encourage better design and site planning.

B. To ensure that new multi-family development is sensitive to the character of the surrounding neighborhoods.

C. To enhance the built environment for pedestrians in higher-density areas.

D. To provide for development of neighborhoods with attractive, well-connected streets, sidewalks, and trails that enable convenient, direct access to neighborhood centers, parks, and transit stops.

E. To ensure adequate light, air, and readily accessible open space for multi-family development in order to maintain public health, safety and welfare.

F. To ensure the compatibility of dissimilar adjoining land uses.

G. To maintain or improve the character, appearance, and livability of established neighborhoods by protecting them from incompatible uses, excessive noise, illumination, loss of privacy, and similar significant impacts.

H. To encourage creativity and flexibility in the design of multi-family developments in a manner that maximizes unique site attributes and is compatible with the character and intensity of adjoining land uses.

(Ord. 311 (2003) [Attachment 7 (part)], 2003)

**17.351.020 Applicability – How to use the design criteria.**

A. Applicability.

1. The "requirements sections" in the following design criteria apply to each multi-family project requiring site plan review under Chapter 17.410 of this title, or conditional use review under Chapter 17.420 of this title.

2. In addition to the requirements set forth in this Chapter 17.351, the "requirements sections" set forth in Section 17.354.160 and Sections 17.354.180 to 17.354.240 shall apply to each multi-family project requiring review under subsection (A), above.

B. How to Use the Design Criteria. The "requirements sections" state the design criteria that each project shall meet. These design criteria are intended to supplement the development standards of the UCR, UM AND UH zones. Where the provisions of this Chapter 17.351 conflict with the provisions of Chapters 17.335 (UCR), 17.340 (UM), and 17.350 (UH), the provisions of the zoning district shall apply. The "guidelines" which follow each requirement statement are suggested ways to achieve the design intent. Each guideline is meant to indicate the preferred conditions, but other equal or better design solutions will be considered acceptable by the director or hearing examiner, so long as these solutions meet the intent of these sections. They are to be applied with an attitude of flexibility, recog-

nizing that each development site and project will have particular characteristics that may suggest that some guidelines be emphasized and others de-emphasized. However, while alternative solutions can be proposed, none of the criteria in the requirement statements can be disregarded.
(Ord. 311 (2003) [Attachment 7 (part)], 2003)

### 17.351.030 Multi-family site design – Orientation (UCR, UM and UH zones).

A. Requirement. Design multi-family projects to be oriented to public streets or common open spaces and to provide pedestrian and vehicular connections to existing neighborhoods.

B. Guidelines. Possible ways to achieve neighborhood connections include:

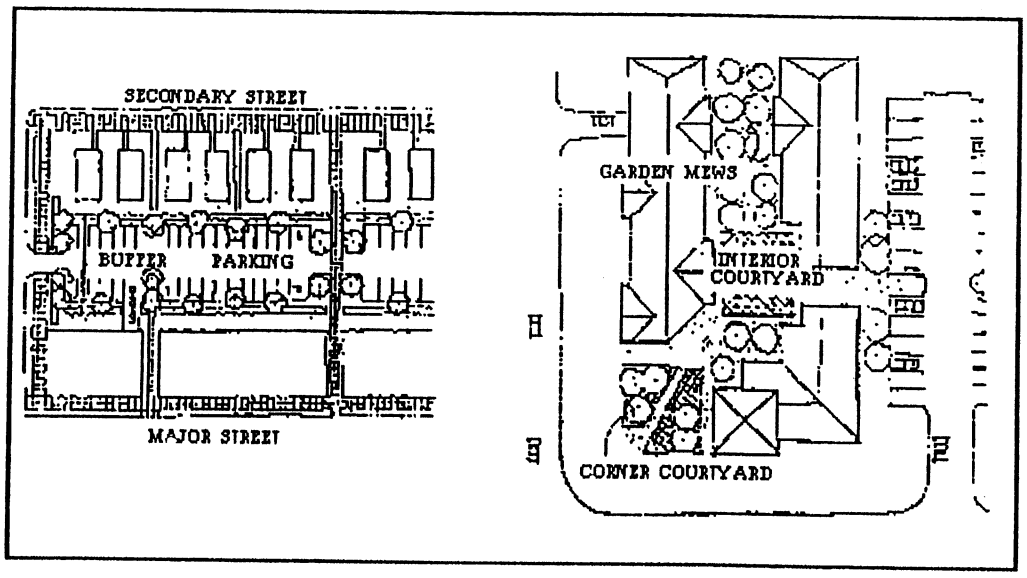
1. Use a modified street grid system where most buildings in a project front on a street. Where no public streets exist, create a modified grid street system within the project.

2. Locate parking areas behind or under building and access such parking from alley-type driveways. If driveway access from streets is necessary, minimum width driveway providing adequate fire-fighting access should be used.

3. Provide each building with direct pedestrian access from the main street fronting the building and from the back where the parking is located.

4. Another alternative may be to orient the buildings into U-shaped courtyards where the front door/main entry into the building is from a front courtyard. Access to the courtyard from the rear parking area should be through a well-lighted breezeway or stairway. This alternative will work where projects abut an arterial or major collector street where the quality of living could be enhanced with building facing into the courtyard. The buildings would still be located between the street and parking lot.

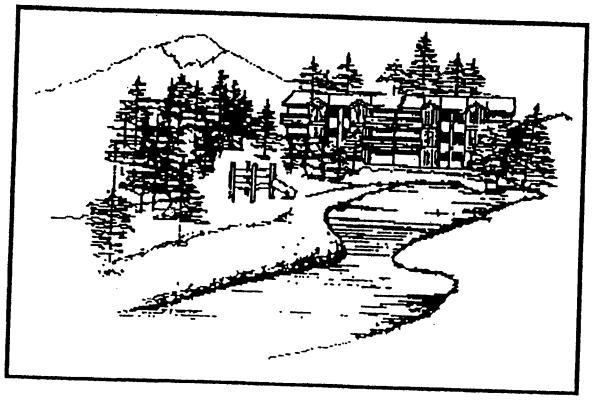
5. The following illustrations depict site-planning techniques that orient multi-family projects to streets, adding value and identity to the complex, by siting parking behind the buildings:




*Examples of preferred site planning that orients multi-family projects to streets, adding value and identity to the complex, by siting parking behind the buildings.*

[Additional illustration follows on next page]

4. Incorporate a variety of activities for all age groups in the active recreational open space.



*Consider drainage/retention areas that enhance the environment and open space usage.*

(Ord. 311 (2003) [Attachment 7 (part)], 2003)

**17.351.080 Landscape design.**

A. Requirement. In addition to the requirements in Chapter 17.385 of this Zoning Code, landscaping and supporting elements (such as trellises, planters, site furniture or similar features) shall be appropriately incorporated into the project design.

B. Guidelines.

1. Minimize tree removal and incorporate larger caliper trees to obtain the immediate impact of more mature trees when the project is completed.

2. Provide frameworks such as trellises or arbors for plants to grow on.

3. Incorporate planter guards or low planter walls as part of the architecture.

4. Landscape the open areas created by building modulation.

5. Incorporate upper story planter boxes or roof plants.

6. Retain natural greenbelt vegetation that contributes to greenbelt preservation.

7. On streets with uniform planting of street trees and/or distinctive species, plant street trees that match the street tree spacing and/or species.

8. Use plants that require low amounts of water, including native drought-resistant species, and require low amounts of chemicals and fertilizers.

(Ord. 311 (2003) [Attachment 7 (part)], 2003)

## Chapter 17.353
## URBAN CENTER ZONES

**Sections:**



**17.353.010 Purposes.**

A. Purposes – Generally. The general purposes of the urban center zones are as follows:

1. To foster a development pattern offering direct, convenient pedestrian, bicycle, and vehicular access between residences and businesses, in order to facilitate pedestrian and bicycle travel and reduce the number and length of automobile trips.

2. To provide for a compatible mix of single-family, multi-family housing and neighborhood commercial businesses and services, with an emphasis on promoting multi-story structures with commercial uses generally located on the lower floors and residential housing generally located on upper floors.

3. To promote a compact growth pattern to efficiently use developable land within UGAs, to enable the cost-effective extension of utilities, services and streets, to

enable frequent and efficient transit service, and to help sustain neighborhood businesses.

4. To foster the development of mixed-use areas that are arranged, scaled and designed to be compatible with surrounding land.

B. Specific Purposes for the Urban Village Center (UVC) Zone. This zone provides for a compatible mix of small-scale commercial uses and mixed-density housing, typically in multi-story buildings. Development within the zone should promote neighborhood identity, by providing a range of commercial retail and service opportunities in close proximity to housing. The UVC zone is intended to encourage flexible land uses, recognizing that the exact configuration of uses must be responsive to community needs and market conditions. Accordingly, commercial and residential uses may be mixed either vertically or horizontally in the UVC zone, though the more common configuration locates commercial uses on the lower floors of multi-story structures, with residential units located above. Residential densities within this zone may not exceed 18 units per net acre. Development within the UVC zone must occur in a manner that results in the design and construction of an interconnected system of pedestrian and bicycle trails and facilities linking the development in the UVC zone to surrounding residential neighborhoods, open spaces, recreational areas, and transportation corridors.

C. Specific Purposes for the Urban Town Center (UTC) Zone. [Reserved.]
(Ord. 311 (2003) [Attachment 7 (part)], 2003)

**17.353.020 Uses.**

The uses set forth in the Urban Center Zones Use Table 17.353.020 are examples of the uses allowable in the Urban Village Center and Urban Town Center zones. The appropriate review authority is mandatory.

**URBAN CENTER ZONES USE TABLE 17.353.020**

"P" — Permitted uses
"C" — Conditional uses, Chapter 17.420
"R" — Reserved
"SPR" — Site plan review, Chapter 17.410
"X" — Uses specifically prohibited

| USES | UVC | UTC |
|---|---|---|
| **A. Residential** | | |
| 1. Dwellings, single-family [1] | P | R |
| 2. Dwellings, two-family or duplex [1] | SPR | R |
| 3. Cottage housing developments | SPR | R |
| 4. Townhouses (3 or more) [1] | SPR | R |
| 5. Dwellings, multi-family (up to 18 d.u. per net acre) [1] | SPR | R |
| 6. Dwellings, multi-family (more tl.an 18 d.u. per net acre) [1] | X | R |
| 7. Residences above commercial uses in multi-story structures [1] | SPR | R |
| 8. Home businesses | P | R |
| **B. Retail Sales – General Merchandise** | | |
| 1. General merchandise stores in excess of 25,000 square feet gross floor area | X | R |
| 2. General merchandise stores between 5,000 and 25,000 square feet gross floor area | C | R |
| 3. General merchandise stores less than 5,000 square feet gross floor area | SPR | R |

### 17.360.100 Master planning requirements for the South Kitsap UGA/ULID #6 Sub-Area.

Consistent with Chapter 17.428, prior to any new development within an area zoned BP in the South Kitsap UGA/ULID #6 Sub-Area, a master plan shall be prepared for the entirety of the BP zone located within the South Kitsap UGA/ULID #6 Sub-Area prior to any new development; provided that, the director may decrease the area within the sub-area that will be included in the master plan upon making a written finding that doing so will not adversely effect the provision of a coordinated system of open space, parks, recreational areas, transportation improvements and water and wastewater facilities within the entirety of the zone.
(Ord. 311 (2003) [Attachment 7 (part)], 2003)

## Chapter 17.365

## BUSINESS CENTER ZONE (BC)

**Sections:**



### 17.365.010 Purpose.

This zone is intended to provide for integrated grouping of medium to large size businesses within an attractive park-like setting. The Business Center (BC) Zone allows flexibility in the amount of space within each business dedicated to office use, warehousing, and/or light manufacturing operations. Permitted businesses are intended to support the creation, development and retention of primary wage employment in the professional and technical fields, and not intended for the general retail commercial needs of the area. In order to allow higher intensity uses while protecting environmental resources, master planning by watershed sub-basin is required unless specifically exempted.
(Ord. 311 (2003) [Attachment 5 [§ 4 (part)]], 2003)

### 17.365.020 Uses.

The following uses are prohibited within the Business Center Zone.

A. Residential uses, except by caretaker of property in conjunction with a permitted use;

B. Adult entertainment;

C. Animal-related facilities such as stockyards, slaughterhouses and rendering, tanning and butchering facilities;

D. Uses generating obnoxious impacts as defined under Section 17.455.110 of this code;

E. Processing, milling or grinding of lumber, stumps, paper, pulp, etc.;

F. Gravel, asphalt, and concrete mixing; rock crushing and top soil production facilities or operations;

G. Sales and storage of autos, recreational vehicles, heavy equipment, boats and trailers unless associated with a primary use of on-site manufacturing of same, subject to the provisions of subsection (A)(5) of Section 17.370.020 of this code;

H. Shipping container storage, open storage yards and lay down yards not associated with the primary use;

I. Water and energy intensive businesses;

J. Regional retailers and large supermarkets;

K. Automotive salvage yards;

L. Self-storage facilities;

M. Assembly, processing or manufacturing facilities performing on-site hazardous substance processing and handling, or hazardous waste treatment and storage facilities unless clearly incidental and secondary to a permitted use. On-site hazardous waste treatment and storage facilities shall be subject to the state siting criteria (RCW 10.105); and

N. Bulk storage of hazardous materials not used in an on-site manufacturing process resulting in a regulated product.

For a list of examples of allowable uses in the BC Zone *see* Business Center, Business Park and Industrial Use Table at Section 17.370.020 of this code.

(Ord. 311 (2003) [Attachment 5 [§ 4 (part)]], 2003)

**17.365.025 Master plan required.**

Except as specifically exempted below, all development within this zone must be consistent with a master plan developed under Chapter 17.415 of this code.

A. South Kitsap Industrial Area. Development in the 'Business Center' zone with a master plan optional overlay as depicted in the South Kitsap Industrial Area Plan will have the option of developing a master plan pursuant to Chapter 17.415 of this code. For developments not electing to develop a master plan, all uses shown as "Permitted" in Table 17.370.020 will require a "Site Plan Review". Master plans developed within the South Kitsap Industrial Area must include analyses of the entire sub-basin(s) in which the development is proposed.

(Ord. 311 (2003) [Attachment 5 [§ 4 (part)]], 2003)

**17.365.030 Height regulation.**

No structure shall be hereafter erected, enlarged, or structurally altered to exceed thirty-five feet in height, ***except*** a greater height may be allowed upon review/approval by the director with concurrence from the fire marshal/fire district, if the net result is an overall increase in areas used for open space, recreational areas, or other public amenities, or the design results in a more creative or efficient use of land.

(Ord. 311 (2003) [Attachment 5 [§ 4 (part)]], 2003)

**17.365.040 Site requirements.**

A. Site Area. There shall be no minimum site area within this zone.

B. Yard Abutting a Residential Zone. The minimum site setback shall be seventy-five feet for any yard abutting a residential zone, unless berming and landscaping approved by the director is provided which will effectively screen and buffer the business park activities from the residential zone which it abuts; in which case, the minimum site setback may be reduced to less than seventy-five feet but no less than twenty-five feet. In all other cases, minimum site setbacks shall be twenty feet. No structures, open storage, or parking shall be allowed in the setback area. The plan for landscaping may only be approved if the landscaping is designed to preserve the quality of the residential zone.

C. Site Coverage. Site coverage will be determined through the master plan process in accordance with sub-area and master plan policies.

D. Service Roads, Spur Tracks, and Hard Stands. No service road, spur track, or hard stand shall be permitted within required yard areas that abut residential zones.

E. Yards are required where side or rear lot lines abut railroad right-of-way or spur tracks.

F. Fences, walls and hedges will be allowed inside of a boundary planting screen where it is necessary to protect property of the industry or business concerned; or to protect the public from a dangerous condition. Fences may not be located in or adjacent to a required yard adjacent to a public right-of-way.

(Ord. 311 (2003) [Attachment 5 [§ 4 (part)]], 2003)

**17.365.050 Signs.**

Signs shall be permitted according to the provisions of Chapter 17.445 of this code, providing that signs also conform to design standards associated with this zone and/or design standards associated with a particular sub-area.

(Ord. 311 (2003) [Attachment 5 [§ 4 (part)]], 2003)

### 17.365.060 Off-street parking and loading.

Off-street parking and loading shall be provided as required by Chapter 17.435 of this code.

(Ord. 311 (2003) [Attachment 5 [§ 4 (part)]], 2003)

### 17.365.070 Site landscaping and design plan.

Development within this zone shall be subject to review and approval by the director of a site landscape and design plan based on conformance to design standards associated with this zone and/or design standards associated with a particular sub-area. In addition to the requirements of Chapter 17.385 of this code, the following requirements shall apply:

A. All required landscaping shall be installed prior to occupancy, unless installation is bonded at 150 percent of the cost of materials and labor (or other method) for a period not to exceed six months.

B. Required rear and side yard setback areas abutting a residential zone shall provide and maintain a dense evergreen buffer which attains a mature height of at least eleven feet, or other screening measure as may be prescribed by the director.

C. Required setback areas adjacent to streets and those abutting a residential zone shall be continuously maintained in plantings, with such live ground cover and trees or shrubs established and maintained in a manner providing a park-like character to the property.

D. Areas which are to be maintained in their natural setting shall be so designated on a landscape plan, and subject to the review and approval of the director.

E. All mechanical, heating, and ventilating equipment shall be visually screened whether on grade or building mounted.

(Ord. 311 (2003) [Attachment 5 [§ 4 (part)]], 2003)

### 17.365.080 Performance standards.

No land or structure shall be used or occupied within this zone unless there is compliance with the following minimum performance standards:

A. Maximum permissible noise levels shall be in compliance with the Kitsap County Noise Ordinance.

B. Vibration, other than that caused by highway vehicles, trains, and aircraft which is discernible without instruments at the property line of the use concerned is prohibited.

C. Smoke and Particulate Matter. Air emissions must meet standards approved by the Puget Sound Air Pollution Control Authority.

D. Odors. The emission of noxious gases or matter in such quantities as to be readily detectable at any point beyond the property line of the use causing such odors is prohibited.

E. Heat and Glare. Except for exterior lighting, operations producing heat and glare shall be conducted within an enclosed building. Exterior lighting shall be designed to shield surrounding streets and land uses from nuisance and glare.

(Ord. 311 (2003) [Attachment 5 [§ 4 (part)]], 2003)

### 17.365.090 Administration.

A. As a condition for the granting of a building permit and/or site plan approval, at the request of the director, information sufficient to determine the degree of compliance with the standards in this title, shall be furnished by the applicant. Such request may include continuous records of operation, for periodic checks to assure maintenance of standards or for special surveys. Maximum permissible noise levels shall be in compliance with the Kitsap County Noise Ordinance.

B. All business, service repair, processing, storage, or merchandise display on property abutting or across the street from a lot in any residential zone, shall be conducted wholly within an enclosed building unless screened from the residential zone by a site-obscuring fence or wall.

(Ord. 311 (2003) [Attachment 5 [§ 4 (part)]], 2003)

# Chapter 17.370

# INDUSTRIAL ZONE (IND)

**Sections:**



## 17.370.010 Purpose.

This zone is intended to provide sites for activities which require processing, fabrication, storage, and wholesale trade. Generally, these activities require reasonable accessibility to major transportation corridors including highways, rail, airports or shipping.
(Ord. 216-1998 § 4 (part), 1998)

## 17.370.020 Uses.

The following Business Center, Business Park and Industrial Use Table 17.370.020 is a list of examples of allowable uses in the business park (BP) and industrial (IND) zones.

Any use allowed in the airport (A) zone is also an allowable use in the IND and BP zones utilizing the same review process as identified in the airport zone. The appropriate review, as listed, is mandatory.

**BUSINESS CENTER, BUSINESS PARK AND INDUSTRIAL USE TABLE 17.370.020**

"P" — Permitted uses
"C" — Conditional uses, Chapter 17.420
"SPR" — Site plan review, Chapter 17.410
"X" — Uses specifically prohibited

| | USES | BP | BC[1] | IND[2] |
|---|---|---|---|---|
| A. | **Services, Retail and Amusements** | | | |
| 1. | Laundry for carpets, overalls, rugs, and rug cleaning, using non-explosive and non-flammable cleaning fluids | SPR | P | SPR |
| 2. | Parcel delivery service | SPR | P | SPR |
| 3. | Animal hospital, kennels and animal boarding places | SPR | P | SPR |
| 4. | Ambulance service | SPR | P | SPR |
| 5. | All types of automobile, motorcycle, truck, and equipment service, repair, and rental | SPR | P | SPR |
| 6. | Boat building, and repair | SPR | P | SPR |
| 7. | Fuel oil distributors | X | X | SPR |
| 8. | Service commercial uses such as banks, restaurants, cafes, drinking places, automobile service stations, and other business services located to serve adjacent industrial areas | C | P | SPR |
| 9. | Retail or combination retail/wholesale lumber and building materials yard | X | P[3] | SPR |
| 10. | Manufactured home and trailer storage or rental | X | X | SPR |
| 11. | Amusement park | X | X | C |
| 12. | Circus, carnival or other type of transient and outdoor amusement enterprises | X | X | SPR |
| 13. | Race track; auto or motorcycle | C | X | C |
| 14. | Museums, aquariums, historic, or cultural exhibits | SPR | P | SPR |

| USES | BP | BC[1] | IND[2] |
|---|---|---|---|
| **A. Services, Retail and Amusements (Continued)** | | | |
| 15. Tourism facilities including outfitters, guides, and seaplane and tour-boat terminals | SPR | P | SPR |
| **B. Manufacturing** | | | |
| 1. Assembly and fabrication of sheet metal products | SPR | P | SPR |
| 2. Assembly, manufacture, compounding, packaging or treatment of articles or merchandise (Non-Hazardous) | SPR | P | SPR |
| 3. Assembly, manufacture, compounding, packaging or treatment of articles or merchandise (Hazardous) | X | X | C |
| 4. Ship building, dry dock, ship repair, dismantling | X | P | SPR |
| 4a. Aircraft manufacturing, assembly, repair, dismantling | X | P | SPR |
| 5. Manufacture of paper and by-products of paper | X | X | SPR |
| 6a. Manufacture of roofing paper or shingles, asphalt in facilities less than 10,000 square feet | SPR | P | SPR |
| 6b. Manufacture of roofing paper or shingles, asphalt in facilities 10,000 square feet or greater | C | P | C |
| 7. Manufacture of mobile and manufactured homes | X | P | SPR |
| 8a. Forest products manufacturing or shipping facilities which are not located on the waterfront such as assembly of previously milled wood into furniture, cabinetry or decorative items. | X | P | SPR |
| 8b. Forest products manufacturing or shipping facilities which are located on the waterfront such as assembly of previously milled wood into furniture, cabinetry or decorative items. | X | X | C |
| **C. Processing and Storage** | | | |
| 1. Spinning or knitting of fibrous materials | SPR | P | SPR |
| 2. Non-marine related wholesale business, and warehouses not including mini-storage facilities | SPR | P | SPR |
| 3. Non-marine related cold storage plants, including storage and office | SPR | X | SPR |
| 4. Processing uses such as bottling plants, creameries, laboratories, blue printing, and photocopying, tire retreading, recapping, and rebuilding | SPR | P | SPR |
| 5. Storage or sale yard for building materials, contractors' equipment, house mover, delivery vehicles, transit storage, trucking terminal, and used equipment in operable condition | X | X | SPR |
| 6. Brewery, distillery, or winery | SPR | P | SPR |
| 7. Junkyards or wrecking yards | X | X | C |
| 8. Grain elevator and flour milling | X | P | SPR |
| 9. Sawmills, lumber mills, Planing mills, and molding plants | X | P | SPR |
| 10. Junk, rags, paper, or metal salvage, storage or processing | X | X | C |
| 11. Rolling, drawing, or alloying ferrous and nonferrous metals | X | X | SPR |
| 12. Rubber, treatment or reclaiming plant | X | X | SPR |
| 13. Slaughterhouse or animal processing | X | X | C |
| 14. Major petroleum storage and/or refining | X | X | C |
| 15. Recycling centers (excluding junkyards) | SPR | X | SPR |
| 16. Incinerator or reduction of garbage, offal, dead animals or refuse | X | X | C |

| USES | | BP | BC[1] | IND[2] |
|---|---|---|---|---|
| **C.** | **Processing and Storage (Continued)** | | | |
| 17. | Marine-related storage of equipment, supplies, materials, boats, nets, and vehicles | X | X | SPR |
| 18. | Cold storage facilities for marine or agricultural products | SPR | X | SPR |
| 19. | Processing, grinding or mixing of organic material for topsoil or soil amendments | X | X | SPR |
| **D.** | **Aggregate Products** | | | |
| 1. | Manufacture of concrete products and associated uses | X | X | C |
| 2. | Manufacture of concrete products entirely within an enclosed building | SPR | P | SPR |
| 3. | Surface mining and quarries, subject to the provisions of the Mineral Resource Zone | X | X | C |
| **E.** | **Other** | | | |
| 1. | Business and Professional services | P | P | SPR |
| 2. | Welding shop | C | P | SPR |
| 3. | Existing residential use without any increase in density | P | P | P |
| 4. | Residential dwelling for caretaker on the property in conjunction with a permitted use | P | P | P |
| 5. | Administrative, educational, and other related activities and facilities in conjunction with a permitted use | SPR | P | SPR |
| 6. | Research Laboratory | SPR | P | SPR |
| 7. | Aquaculture | X | P | C |
| 8. | Cabinet, electrical, plumbing, sheet metal/welding, electroplating and similar fabrication shops | SPR | P | SPR |
| 9. | Marine manufacturing repairs and services | SPR | P | SPR |
| 10. | Shellfish/fish hatcheries and processing facilities | X | X | C |
| 11. | Marinas | X | X | C |
| 12. | Forestry | P | P | P |
| 13. | Agriculture | P | P | P |
| 14. | Industrial Park | SPR | X | SPR |
| **F.** | **Public Services and Facilities** | | | |
| 1. | Police and fire substations | SPR | P | SPR |
| 2. | Educational institutions | SPR | P | SPR |
| 3. | Publicly-owned land/water transhipment facilities, including docks, wharves, marine rails, cranes, and barge facilities | C | P | C |
| 4. | Recreational Facilities Public/Private | C | P | C |

1 Uses "Permitted" only if consistent with an approved master plan pursuant to Chapter 17.415. Where a master plan is optional and the applicant chooses not to develop one, these uses require a "Site Plan Review."

2 For properties with an approved master plan pursuant to Chapter 17.415, all uses requiring a "Site Plan Review" or "Conditional Use Permit" will be considered "Permitted" uses.

3 Retail must be associated with a primary permitted use.

(Ord. 311 (2003) [Attachment 5 [§ 5 (part)]], 2003: Ord. 292 (2002) § 8, 2002: Ord. 281 (2002) § 9, 2002: Ord. 216-1998 § 4 (part), 1998)

**17.370.022 Master plan required.**

Development of property with a master plan required overlay must be consistent with a master plan approved under Chapter 17.415 of this code. Property with no overlay or a master plan optional overlay, may elect to develop a master plan to receive the expedited review of individual land use permits shown in Table 17.370.020 (Footnote No. 2). Master plans developed within the South Kitsap Industrial Area must include analyses of the entire sub-basin(s) in which the development is proposed.

(Ord. 311 (2003) [Attachment 5 [§ 6 (part)]], 2003)

**17.370.025 Existing plan recognition – Bremerton National Airport and Olympic View Industrial Park.**

The Port of Bremerton's plans for the Bremerton National Airport and the Olympic View Industrial Park in place before the adoption of the South Kitsap Industrial Area Plan will be considered master plans consistent with Chapter 17.415 until the earliest of the following events:

A. The Port of Bremerton chooses to submit a master plan(s) meeting the requirements of Chapter 17.415; or

B. The Port of Bremerton or other developers of these lands within these areas submit development applications inconsistent with the currently recognized plans; or

C. Six months from the date of adoption of the South Kitsap Industrial Area Plan.

(Ord. 311 (2003) [Attachment 5 [§ 6 (part)]], 2003)

**17.370.030 Height regulation.**

No structure shall be hereafter erected, enlarged, or structurally altered to exceed thirty-five feet in height, ***except*** a greater height may be allowed upon review/approval by the director with concurrence from the fire marshal/fire district, if the net result is a more efficient or creative use of land for aviation or an overall increase in areas used for open space, recreational areas, or other public amenities.

(Ord. 311 (2003) [Attachment 5 [§ 7]], 2003: Ord. 216-1998 § 4 (part), 1998)

**17.370.040 Lot requirements.**

A. Minimum area of new zone – None.

B. Maximum area of new zone – None.

C. Minimum lot area – None.

D. Minimum lot width – None.

E. Minimum lot depth – None.

F. Minimum front yard setback – twenty feet.

G. Minimum side yard setback – None.

H. Rear yard setback – None.

I. Yard abutting a residential zone – Wherever an industrial zone abuts a residential zone, a fifty foot landscaped setback area shall be provided with plantings, as approved by the director. No structures, open storage, or parking shall be allowed. The plan for landscaping may only be approved if the landscaping is designed to preserve the quality of the residential zone. The minimum lot setback shall be fifty feet for any yard abutting a residential zone unless berming and landscaping or other screening approved by the director is provided, which will effectively screen and buffer the industrial activities, from the residential zone which it abuts; in which case, the minimum setback may be twenty-five feet. These setbacks are the minimum setbacks required and may be increased by the director to ensure adequate buffering and compatibility between uses.

(Ord. 216-1998 § 4 (part), 1998)

**17.370.050 Lot coverage.**

Maximum lot coverage by buildings and structures shall not exceed sixty percent.

(Ord. 216-1998 § 4 (part), 1998)

**17.370.060 Signs.**

Signs shall be permitted according to the provisions of Chapter 17.445.

(Ord. 216-1998 § 4 (part), 1998)

### 17.370.070 Off-street parking and loading.

Off-street parking and loading shall be provided as required by Chapter 17.435. In addition, no off-street parking or loading shall be allowed within fifty feet of an adjacent residential zone, unless the director finds that a buffer will exist that effectively screens the parking and loading from the adjacent residential zone, in which case, no off-street parking or loading shall be allowed within twenty-five feet of an adjacent residential zone. Off-street parking or loading may be permitted within the side yard but not within a required front yard area.
(Ord. 216-1998 § 4 (part), 1998)

### 17.370.080 Site landscaping and design plan.

Development within this zone shall be subject to review and approval by the director of a site landscape and design plan.
(Ord. 216-1998 § 4 (part), 1998)

### 17.370.090 Other provisions.

A. In any industrial zone, an industrial park as further described, may be permitted. An industrial park is intended to provide centers or clusters of not less than twenty acres for most manufacturing and industrial uses under controls which will minimize the effect of such industries on nearby uses. Industrial parks are intended to encourage industrial activities to occur within a park-like environment. Any use permitted outright in all industrial zones, by conditional use or by site plan review when located in an industrial park are subject to the following provisions:

1. Lot Requirements.

a. Lot area – None.

b. Lot width – None.

c. Lot depth – Minimum lot depth shall be two hundred feet.

d. Lot setback – Minimum lot setback shall be one hundred feet for any yard abutting a residential zone, unless berming and landscaping approved by the director is provided, which will effectively screen and buffer the industrial activities from the residential zone which it abuts; in which case, the minimum setback shall be fifty feet.

1. Front Yard – Minimum front yard setback shall be forty feet.

2. Side Yard – Minimum side yard setback shall be twenty-five feet.

3. Rear Yard – Minimum rear yard setback shall be twenty feet.

e. Lot coverage – Maximum lot coverage by buildings shall be fifty percent of the total lot area.

f. No service roads, spur tracks, hard stands, or outside storage areas shall be permitted within required yard areas adjacent to residential zones.

g. No yards are required at points where side or rear yards abut a railroad right-of-way or spur track.

h. Fences, walls and hedges will be allowed inside of a boundary planting screen where it is necessary to protect property of the industry concerned, or to protect the public from a dangerous condition with no fence being constructed in a required yard adjacent to public right-of-way.

2. Signs shall be permitted according to the provisions of Chapter 17.445.

3. Off-street parking and loading shall be provided as required by Chapter 17.435, and off-street loading shall not be permitted in a required side or rear yard setback abutting a residential zone. No off-street loading may be permitted within fifty feet of a public right-of-way or access easement.

4. Site Landscaping and Design Plan. Development within this zone shall be subject to review and approval by the director of a site landscape and design plan. In addition to the requirements of Chapter 17.385, the following requirements shall apply:

a. All required landscaping shall be installed prior to occupancy, unless installation is bonded (or other method) for a period not to exceed six months in an amount to be determined by the director.

b. Required rear and side yard setback areas abutting a residential zone shall provide

and maintain a dense evergreen buffer which attains a mature height of at least eleven feet, or other screening measure as may be prescribed by the director.

c. Areas which are to be maintained shall be so designated on a landscape plan, and subject to the review and approval of the director.

d. All mechanical, heating and ventilating equipment shall be visually screened.

5. Performance Standards. No land or structure shall be used or occupied within this zone unless there is compliance with the following minimum performance standards:

a. Maximum permissible noise levels shall be in compliance with the Kitsap County Noise Ordinance.

b. Vibration other than that caused by highway vehicles, trains, and aircraft which is discernible without instruments at the property line of the use concerned is prohibited.

c. Air emissions (smoke and particulate matter) must be approved by the Puget Sound Air Pollution Control Authority.

d. The emission of noxious gases (odors) or matter in such quantities as to be readily detectable at any point beyond the property line of the use causing such odors is prohibited.

e. Heat and glare, except for exterior lighting, operations producing heat and glare shall be conducted within an enclosed building. Exterior lighting shall be designed to shield surrounding streets and land uses from nuisance and glare.

6. Administration. As a condition for the granting of a building permit and/or site plan approval, at the request of the director, information sufficient to determine the degree of compliance with the standards in this title, shall be furnished by the applicant. Such request may include continuous records of operation, for periodic checks to assure maintenance of standards or for special surveys.

B. In an approved or recognized master planned industrial development or in an approved industrial park as described in Section 17.370.090(A), any use identified in Table 17.370.020 requiring site plan review shall be considered a permitted use subject to the development requirements of the master plan or industrial park approval. Further permitted uses under this section shall be required to obtain all necessary development permits including, but not limited to, a building permit and a site development activity permit and shall be subject to SEPA review as required.

C. All business, service repair, processing, storage, or merchandise display on property abutting or across the street from a lot in any residential zone, shall be conducted wholly within an enclosed building unless screened from the residential zone by a site-obscuring fence or wall.

D. Other provisions: *see* Chapter 17.430. (Ord. 216-1998 § 4 (part), 1998)

## Chapter 17.375

## AIRPORT ZONE (A)

**Sections:**



### 17.375.010 Purpose.

This zone is intended to recognize and protect those areas devoted to public use aviation. It is also intended to provide areas for those activities supporting or dependent upon aircraft or air transportation, when such activities benefit from a location within or immediately

adjacent to primary flight operations and passenger or cargo service facilities.
(Ord. 216-1998 § 4 (part), 1998)

**17.375.020 Permitted uses.**

The following uses are permitted:

A. Uses necessary for airport operation such as runways, hangars, fuel storage facilities, control towers, etc.;

B. Repair, service and storage of aircraft;

C. Helicopter pads;

D. Aerial mapping and surveying;

E. Government structures, including fire stations, libraries, museums, and post offices, but not including storage or repair yards, warehouses, or similar uses; and

F. Agriculture.

(Ord. 216-1998 § 4 (part), 1998)

**17.375.030 (Reserved)**

**17.375.040 Uses permitted after site plan review as set forth in Chapter 17.410.**

A. Restaurants;

B. Businesses which utilize air travel and transportation in their daily business activities;

C. Air pilot training schools;

D. Air cargo warehousing and distribution facilities;

E. Aviation clubs;

F. Auto rental agencies;

G. Taxi, bus, and truck terminals; and

H. Service to commuter airlines.

(Ord. 216-1998 § 4 (part), 1998)

**17.375.044 Master plan required.**

Development of property(s) with a master plan required overlay must be consistent with a master plan approved under Chapter 17.415 of this code. Master plans developed within the South Kitsap Industrial Area must include analyses of the entire sub-basin(s) in which the development is proposed.
(Ord. 311 (2003) [Attachment 5 [§ 9 (part)]], 2003)

**17.375.046 Existing plan recognition – Bremerton National Airport.**

The Port of Bremerton's plan for the Bremerton National Airport in place before the adoption of the South Kitsap Industrial Area Plan will be considered a master plan consistent with Chapter 17.415 of thi code until the earliest of the following events:

A. The Port of Bremerton chooses to submit a master plan meeting the requirements of Chapter 17.415; or

B. The Port of Bremerton or other developers of the lands in this area submit development applications inconsistent with the currently recognized plan; or

C. Six months from the date of adoption of the South Kitsap Industrial Area Plan.

(Ord. 311 (2003) [Attachment 5 [§ 9 (part)]], 2003)

**17.375.050 Height regulation.**

No structure shall be hereafter erected, enlarged, or structurally altered to exceed thirty-five feet in height with the exception of aircraft hangar buildings. A greater height may be allowed upon review/approval by the director with concurrence from the fire marshal/fire district, if the net result is a more efficient or creative use of land for industry or an overall increase in areas used for open space, recreational areas, or other public amenities
(Ord. 311 (2003) [Attachment 5 [§ 8]], 2003: Ord. 216-1998 § 4 (part), 1998)

**17.375.060 Lot requirements.**

A. Lot Area. None.

B. Lot Width. None.

C. Lot Depth. None.

D. Front Yard. Minimum front yard setback shall be twenty feet.

E. Side Yard. Minimum side yard setback shall be fifty feet when abutting a residential zone.

F. Rear Yard. Minimum rear yard setback shall be fifty feet when abutting a residential zone.

G. Lot Coverage. No requirement.

(Ord. 216-1998 § 4 (part), 1998)

or other permit until such appeal has been completed.
(Ord. 216-1998 § 4 (part), 1998)

**17.410.080 Site plan review exemption.**

The director may issue an exemption from the site plan review process upon written request, if it is determined that a request for a building permit does not involve a change in use or structure size.
(Ord. 216-1998 § 4 (part), 1998)

**17.410.110 Reapplication.**

In a case where an application is denied through the normal review process, or denied on an objection to either the hearing examiner or board of county commissioners, unless specifically stated to be without prejudice, it shall not be eligible for resubmittal for a period of one year from the date of said denial unless in the opinion of the director, new evidence is submitted or conditions have changed to an extent that further consideration is warranted.
(Ord. 216-1998 § 4 (part), 1998)

## Chapter 17.415
## MASTER PLANNING

**Sections:**



**17.415.010 Purpose.**

The master plan is intended to provide means for planning and assessing sites for activities such as those that require processing, fabrication, storage, research and development, business support services, and wholesale trade. Generally, these activities require reasonable accessibility to major transportation corridors including highways, rail, airports or shipping. Development of master plans will occur based on a master planning process intended to assure availability of adequate capital facilities and infrastructure to support such uses and to assure adequate protection of environmental resources located in or near properties required to master plan or that choose to master plan.
(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

**17.415.020 Concurrent permit processing.**

When master planning is required in a zone wherein some uses require a conditional use permit or site plan review, the master plan process provided by this chapter may be used in lieu of those processes. In areas where master planning is not specifically required under county plans or regulations, this master planning process may be used, at the option of the applicant, in lieu of a required site plan review process or conditional use permit process.

(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

**17.415.030 Master plan required.**

Prior to the issuance of any development permits, development of property(s) with a master plan Required overlay must be consistent with a master plan approved pursuant to this chapter. Properties with no overlay or a master plan Optional overlay are not required to develop a master plan, but may in order to qualify for expedited review of individual development permits. master plans developed within the South Kitsap Industrial Area must include analyses of the entire sub-basin(s) in which the development is proposed.

**17.415.035 Development exempt from master plan requirements.**

The following development activities are exempt from the master plan requirement:

A. Renovation, remodeling and maintenance of existing development, provided no significant increase in impervious surface, increase in peak hour traffic, or increase in demand for public water supply or sanitary sewer service occurs as the result of such renovation, remodeling or maintenance.

B. Minor new development projects. For purposes of this exemption, a new development project shall be considered minor if it (a) does not result in new impervious surface in excess of 5,000 square feet on a site, (b) does not generate more than 10 new peak hour traffic trips on public roads serving the site, and (c) does not increase the demand on a public or private water supply by more than 5000 g.p.d.

C. New minor development projects, which are exempt from SEPA pursuant to WAC 197-11-800 through 197-11-880, and Section 18.04.240 of this code.

D.Other new development projects, which the director determines in his discretion will not significantly adversely impact the environment, will not create a need for regional infrastructure facilities and will not impede the future design and installation of regional infrastructure facilities, including public streets and highways, storm water control systems, and public water and sanitary sewer systems.

(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

**17.415.040 Use of existing master plan.**

Development in zones requiring or allowing master planning may use an existing master plan under the following circumstances:

A. The property has a previously approved master plan, which the director determines to be sufficient to permit review of the potential impacts of the development and identification of necessary mitigation measures; or

B. An existing master plan prepared for other properties in the vicinity of a development site, which addresses some, but not all, of the substantive issues set forth in the subarea plan may be supplemented by an addendum, which addresses only those issues not previously analyzed. Such an addendum and the initial master plan must be reviewed by the director pursuant to the procedures set forth in this chapter for review and approval of a master plan.

(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

**17.415.050 Third party review.**

The county may require third party review in cases where additional professional or technical expertise is required.

(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

### 17.415.060 Sub-area conceptual development plan update

As master plans in zones requiring or allowing master plans are approved, the department of community development will update a "working copy" of a sub-areas' conceptual development plan, if such a plan is available. As this "figure" evolves from a "conceptual development plan" toward a "master development plan" based on approved master plans, it may be used as an inventory, planning, and economic development tool for the sub-area. Final approved master plans, including infrastructure and other master plan elements, must be submitted in a data format compatible with ongoing update requirements. (Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

### 17.415.070 Master plan elements – General.

During the pre-application stages of the master planning process, the director of the Kitsap County department of community development shall determine the extent and adequacy of the analyses to be included in the master plan. These required elements will result in a *Master Plan Scoping Summary Notice*. The purpose of this approach is to allow the director and the applicant to tailor the extent of the submittals to the actual and unique circumstances of the proposed development seeking master plan approval. A master plan prepared for purposes of this section shall address the following issues to the extent required by the *Master Plan Scoping Summary Notice*:

A. Storm water controls, including both quantity and water quality;

B. Sanitary sewer service;

C. Public water service;

D. Public street and transportation facilities;

E. Open space facilities;

F. Economic development component;

G. Environmental protection and resources;

H. Other infrastructure/utility requirements, which the director determines, based on review under the State Environmental Policy Act, should be analyzed in a master plan in order to assure that such facilities are available to serve the proposed development in a timely manner and that such facilities are designed and developed in a manner which is coordinated with the infrastructure needs of other properties zoned Business Center or Industrial in the vicinity of the development site. (Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

### 17.415.080 Storm water component of master plan.

Based on elements required in the approved *Master Plan Scoping Summary Notice*, a master plan shall include a storm water analysis meeting the requirements of Title 12 of this code (the Kitsap County Storm Water Management Ordinance) and the following criteria:

A. Based on the approved *Master Plan Scoping Summary Notice*, the storm water analysis shall be based on an approved hydrologic model, as determined by the most recent version of the *Kitsap County Storm Water Manual*.

B. The storm water analysis shall provide a comprehensive analysis of existing and proposed surface water quantity and quality conditions for all sub-basins in which any portion of the development site is located as well as upstream basins which contribute flow to any portion of the development site and downstream basins which receive flows from any portion of the development site. The director may waive the requirement for analysis in any sub-basin in which the proposed development will not create the need for storm water facilities. Downstream analysis shall extend to an acceptable receiving body of water.

C. The storm water analysis shall assume full build-out of the sub-basins, including upstream and downstream basins, at levels of development permitted by applicable county

regulations in effect at the time of master plan preparation.

D. At a minimum, specific technical elements of the storm water analysis shall include:

1. A conceptual or preliminary plan of the proposed drainage collection and flow control systems, based upon accurate topographic mapping and geologic data.

2. All assumptions, parameters, and input data used in the hydrologic model.

3. Hydrologic performance data (stage, storage, discharge) for all elements of the hydrologic system, whether existing or proposed.

4. Flow data for all existing and proposed conveyance facilities, including swales, streams, pipes, and ditches which will support the proposed system.

5. Floodplain analysis identifying flows, velocities, and extent of flooding for the existing and proposed conditions, including backwater or tailwater analysis as appropriate.

6. Erosion analysis of on-site and downstream open-drainage systems, identifying flows, velocities, areas of existing and future deposition and channel erosion, and characterization of sediment.

7. Geotechnical analysis of the site and proposed improvements which addresses soils and slope stability for proposed lakes/ponds, road alignments, channel/ravine conditions, building setbacks from steep slopes, vegetation preservation and controls, existing and proposed drainage facilities, and downstream system stability.

8. Method and conceptual design for maintaining existing flow regimes in any swales/ravines that may be altered by the development.

9. Method, conceptual design, and location of water quality compensating facilities that may be necessary to replace naturally occurring biofiltration functions of site vegetation.

10. Description of maintenance design features and provisions that will ensure reliable and long-term facility operation.

11. A construction-phasing plan that will ensure storm water/erosion control during development of individual sub-basins.

12. Mapping must be of adequate scale and detail for accurate definition and location of all system elements, both on-site and off-site, and must provide support for hydrologic model characterization.

(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

### 17.415.085 Storm water control standards.

A. Design Standards. Storm water control facilities, including both flow control and water quality systems, shall be designed in accordance with and shall meet the standards of Title 19 of this code (the Kitsap County Critical Areas Ordinance) and Title 12 of this code (the Kitsap County Storm Water Management Ordinance).

B. Reserve Areas. Any development subject to a master plan shall make provision for such reserved tracts, easements and/or rights-of-way as may be necessary to facilitate extension of storm water control facilities identified in the master plan to adjoining properties in the vicinity of the development.

(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

### 17.415.090 Sanitary sewer service component of master plan.

Based on elements required in the approved *Master Plan Scoping Summary Notice*, a master plan shall include a sanitary sewer service analysis meeting the following criteria:

A. The analysis shall include all drainage sub-basins in which any portion of the development site is located, provided the director may waive the requirement for analysis in any sub-basin in which the proposed development will not create the need for sanitary sewer service.

B. The analysis shall identify the sanitary sewer service infrastructure needed to provide sewer service to all sub-basins affected by the proposed development, assuming full build-

out of the sub-basins at levels of development permitted by the zoning in effect at the time of master plan preparation. This analysis shall include a capacity analysis of existing facilities and identify improvements and extensions needed to serve the affected sub-basins at full build-out, including transmission facilities, treatment facilities and related improvements.

C. The sanitary sewer service analysis shall identify potential methods for funding the design and construction of the system improvements needed to serve the affected sub-basins at full build-out, including transmission facilities, treatment facilities and related improvements.

D. The sanitary sewer service analysis may provide for phased implementation of the identified improvements, provided that no development subject to master planning requirements shall be approved until a commitment to provide that portion of the improvements identified by the sanitary sewer service analysis as necessary to serve the development site has been provided, including adequate provision for funding. No development subject to master plan requirements may be occupied until the sanitary sewer service facilities needed to provide service meeting applicable standards to the development site are completed and operational.

E. No new permanent or interim on-site septic systems will be permitted in areas required to use the master planning process, except as expressly allowed by sub-area plans.

(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

### 17.415.095 Sanitary sewer standards.

A. Sanitary sewer facilities shall be designed in accordance with and shall meet the standards of Chapter 13.12 of this code, as applicable, and the standards for the design and construction of sanitary sewer systems adopted by the appropriate sewer system purveyor, the Kitsap County Comprehensive Sewer Plan, and the Washington State Departments of Health and Ecology in effect at the time the master plan is prepared.

B. Any development subject to a master plan shall make provision for such reserved tracts, easements and/or rights-of-way as may be necessary to facilitate extension of sanitary sewer facilities identified in the master plan to adjoining properties in the vicinity of the development.

(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

### 17.415.100 Public water system component of master plan.

Based on elements required in the *Master Plan Scoping Summary Notice*, a master plan shall include a public water system analysis meeting the following criteria:

A. The analysis shall include all of the development site and all additional areas, as determined by the director, which would logically be served by a water system extended to serve the development site, provided the director may waive the requirement for analysis in any portion of the proposed development site that will not create the need for public water service.

B. The analysis shall identify the public water service infrastructure needed to provide water service to all of the proposed development, assuming full build-out of site and other areas logically served by a water system extension to the development site, based on the levels of development that are permitted by the zoning in effect at the time of master plan preparation. This analysis shall include a capacity analysis of existing facilities and identify improvements and extensions needed to serve the affected areas at full build-out, including transmission facilities, storage facilities and related improvements.

C. The public water service analysis shall identify any feasible alternatives for providing water service in the affected areas.

D. The public water service analysis shall identify potential methods for funding the design and construction of the system improvements needed to serve the affected areas at full build-out, including transmission facilities, storage facilities and related improvements.

E. The public water service analysis may provide for phased implementation of the identified improvements, provided that no development subject to master planning requirements shall be approved until a commitment to provide that portion of the improvements identified by the public water service analysis as necessary to serve the development site has been provided, including adequate provision for funding. No development subject to master plan requirements may commence combustible construction or be occupied until the public water service facilities needed to provide service meeting applicable standards to the development site are completed and operational.
(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

### 17.415.105 Public water system standards.

A. Public water system facilities, including transmission and storage systems, shall be designed and constructed in accordance with and shall meet the standards of Chapter 13.28 of this code, as applicable, and the standards for the design and construction of public water systems adopted by the water system purveyor, the adopted Coordinated Water System Plan, and the Washington State Departments of Health and Ecology in effect at the time the master plan is prepared.

B. The water system or systems shall provide adequate potable water and adequate pressure to meet minimum fire flow standards as required under the applicable fire regulations and standards.

C. Any development subject to a master plan shall make provision for such reserved tracts, easements and/or rights-of-way as may be necessary to facilitate extension of public water facilities identified in the master plan to adjoining properties in the vicinity of the development.
(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

### 17.415.200 Transportation analysis component of master plan.

Based on elements required in the approved *Master Plan Scoping Summary Notice*, a master plan shall include a transportation analysis meeting the following criteria:

A. The analysis shall include all Kitsap traffic analysis zones, as defined pursuant to subsection (19) of Section 20.04.020 of this code, in which any portion of the development site is located. The director of public works may waive the requirement for analysis of any area that will not be affected by the road system needed to serve the development site. The director of public works may also require analysis of arterials located outside the affected Kitsap County traffic analysis zones if the director determines that development in the master plan area may generate the need for traffic mitigation measures on such arterials. Washington State Department of transportation shall review transportation analyses for any area, which is likely to affect traffic on state highways.

B. The analysis shall identify a multimodal circulation and access plan identifying transportation infrastructure improvements, including changes to existing roads, new roads, transit service and non-motorized transportation facilities which are needed to provide transportation service to all of the proposed development, assuming full buildout of site and the Kitsap County traffic analysis zones in which any portion of the development site is located, based on the levels of development permitted. This analysis shall include a capacity analysis of existing facilities and identify improvements and extensions needed to serve the affected areas at full buildout. The transportation analysis shall identify a transportation demand management plan (TDMP) for the area and identify how the TDMP coordinates with other TDMPs in the vicinity of the development, commute trips made by single occupant vehicles and vehicle miles traveled (VMT) per employee. The following listing is intended to provide a broad

list of potential TDM strategies for incorporation into the TDMPs.

1. Provision of preferential parking for carpools and vanpools; bicycle parking facilities; changing areas/showers for employees who walk or bike to work;
2. Provision of commuter ride matching services to facilitate employee ridesharing;
3. Provision of subsidies for transit fares, carpooling and/or vanpooling;
4. Alternate work schedules/flex time;
5. On-site amenities such as cafeterias and restaurants, ATMs and other services that would eliminate the need for additional trips;
6. Provision of a program of parking incentives such as a rebate for employees who do not use the parking facilities;
7. Implementation of other measures designed to facilitate the use of high-occupancy vehicles such as on-site day care and emergency ride home service; and
8. Employers or owners of worksites may form or utilize existing transportation management associations to assist members in developing and implementing transportation demand management plans.

C. The transportation analysis shall identify any feasible alternatives for providing transportation service in the affected areas.

D. The transportation analysis shall identify potential methods for funding the design and construction of the system improvements needed to serve the affected areas at full build-out.

E. The transportation analysis may provide for phased implementation of the identified improvements, provided that no development subject to master planning requirements shall be approved until a commitment to provide developer improvements identified by the transportation analysis. All improvements shall meet the adopted concurrency standards of Kitsap County, as set forth in Chapter 20.04 of this code.

F. The transportation analysis shall include appropriate trip generation analyses, trip distribution analyses, and level of service analyses. The director of public works shall require the applicant to use standard trip generation rates published by the Institute of Transportation Engineers or other documented information and surveys approved by the department. The director of public works may approve a reduction in generated vehicle trips based on additional information supplied by the applicant, including information related to commute trip reduction programs pursuant to Chapter 20.08 of this code. The calculation of vehicle trip reductions shall be based upon recognized technical information and analytical process that represent current engineering practice. The director of public works shall have final approval of such data, information and technical procedures as are used to develop trip generation analyses, trip distribution analyses, and level of service analyses.

(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

### 17.415.205 Transportation service standards.

Public transportation facilities, including road, transit and non-motorized vehicle systems, shall be designed and constructed in accordance with and shall meet the level of service standards set forth in the Kitsap County Comprehensive Plan, and all applicable standards for the design and construction of roads and streets for the agency or agencies with jurisdiction over the particular transportation improvement in effect at the time the master plan is prepared.

Any development subject to a master plan shall make provision for such reserved tracts, easements and/or rights-of-way as may be necessary to facilitate extension of transportation facilities identified in the master plan to adjoining properties in the vicinity of the development.

(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

### 17.415.300 Open space component of master plan.

Based on elements required in the *Master Plan Scoping Summary Notice*, a master plan

shall include an open space component meeting the following criteria:

A. The master plan shall identify an interconnected system of passive open spaces, habitat areas and recreational trails accessible to the public and coordinated with and linked to adjacent regional trails. All proposed open spaces and trails shall be based on adopted standards and shall be consistent with and coordinated with adopted county park, open space and trail plans and with the Kitsap County Critical Areas Ordinance.

B. Master plans shall provide for the construction and long-term maintenance of identified trails and open space, based on National Park and Recreation Association guidelines for accessibility. Construction and long-term maintenance of trails and open space may be achieved through dedication of conservation easements, or other public or private means.
(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

### 17.415.400 Economic development component of master plan.

Based on elements required in the *Master Plan Scoping Summary Notice*, a master plan shall include an Economic Development Component meeting the following criteria:

A. Master plans shall strive to create developments in which 50% of jobs pay the average or higher than average annual covered wage for Kitsap County as defined and published by the Washington State Division of Employment Security, "Kitsap County Profile" or comparable publication by that entity. Master plans must include a wage calculation as follows:

1. Plans shall identify, as far as possible, the anticipated land uses for the proposed development.

2. Plans shall identify, as far as possible, the anticipated type and number of jobs, which the proposed development is intended to accommodate.

B. Technology Infrastructure. Master plans shall contain a plan for technology infrastructure to be constructed by the developer, according to adopted county technology regulations and the following criteria:

1. The plan shall depict the type and siting of technology infrastructure serving planned and future development in the area. The plan shall include fiber optic or other high-speed data links or conduit for fiber optic or other high-speed data links to regional technology infrastructure and to other technology infrastructure within the master planned area.

2. The plan shall demonstrate a provision for reserve capacity and/or potential for future expansion of technological capability. Upon adoption of regional technology guidelines, goals, policies and/or standards, these shall be consulted as to the suitability of the type of infrastructure to be installed and/or accommodated in the future.

C. Design Standards. Master plans shall adhere to any design standards adopted as a requirement of the sub-area in which the development is located. No master plan shall be approved for a sub-area requiring design standards until design standards have been developed and approved in accordance with sub-area plan policies.
(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

### 17.415.500 Environmental analysis component of master plan.

Based on elements required in the *Master Plan Scoping Summary Notice* a master plan shall include an Environmental Analysis meeting the following criteria:

A. The master plan shall identify existing conditions on the site, including the delineation of all critical areas, as defined in Title 19 of this code (Critical Areas), which are located in whole or in part in the master planning area for the proposed development.

B. The master plan shall, to the extent as may be otherwise required by Chapter 19.700 of this code, include the following special reports:

1. Wetland Report/Wetland Mitigation Plan;

2. Habitat Management Plan, including wildlife corridor links and connections;

3. Geotechnical Report/Geological Report; and

4. Hydrogeological Report which addresses aquifer recharge area protection and includes analysis of groundwater quantity and quality, hydrologic continuity and impacts to stream flow in adjacent streams.

C. The master plan shall identify all federal and state permits and approvals required for development of the site, including but not limited to NPDES permits, HPA approvals, and approvals required pursuant to the Endangered Species Act. To the extent that mitigation plans are required for such permits, conceptual plans for such mitigation shall be identified in the master plan, recognizing that final approval authority for such mitigation plans may rest with agencies other than Kitsap County.

(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

**17.415.505 Environmental standards.**

Development within a master plan area shall comply with the substantive environmental standards identified in other regulations pertinent to the specific sub-area and Title 19 of this code (Critical Areas) in effect at the time a master plan is prepared.

(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

**17.415.525 Environmental Review.**

Kitsap County staff shall make a SEPA determination at the earliest possible stage in the master plan review process. If at any time during the master plan review process, an Environmental Impact Statement is determined to be required, timelines and processes shall revert to those under Title 18 of this code. If an EIS is required, the development of the master plan may be completed concurrently with development of environmental documents.

(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

**17.415.550 Parties to master plan.**

Landowners representing a majority of property-owners in the sub-basin/master plan area shall be party to the application for master plan scoping and the application for master plan approval for that sub-basin/master plan area. The master plan will include the properties of non-participants in the master plan development process.

(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

**17.415.600 Master plan review process.**

A proposed master plan shall be processed as a Type II development application under Section 21.04.070 of this code. The master plan will require a pre-application meeting as described at Section 21.04.040 of this code. The purpose and goal of this process is to allow the director and the applicant to tailor the extent of the submittals under this ordinance to the actual and unique circumstances and scope of the proposed development seeking master plan approval. After the applicant has received the pre-application summary letter, the following process will apply.

A. An application for master plan scoping and a SEPA checklist shall be submitted to the department.

B. A master plan scoping conference will be held between the department and the applicants to identify the required components of the master plan; to determine the assumptions and standards to be applied in the plan; and to identify existing information and analyses which may be used in the master plan process together with any site-specific issues of concern. The applicant will provide preliminary project information to the extent required to complete the scoping process.

C. Within thirty days of the scoping conference, a written *Master Plan Scoping Summary Notice* will be mailed to the applicant. This notice will include a summary of overall scoping conclusions and a review of elements necessary for an application for a master plan and will direct the applicant to proceed with development of the master plan. The *Master*

*Plan Scoping Summary Notice* will also describe the level of environmental review needed for the master plan, which may include a SEPA threshold determination. Upon receipt of the *Master Plan Scoping Summary Notice*, the applicant will return a signed copy to the department of community development.

D. The applicant shall be responsible for all analysis and planning involved in the preparation of a completed master plan. Upon completion of the master plan, the applicant shall submit an application for master plan approval. Within forty-five days of such application, and in order to ensure that all master plan requirements have been addressed, the department will issue a notice, using the procedure described in Section 21.04.050 of this code, declaring the master plan application to be complete or incomplete.

E. Upon determination that the master plan application is complete and ready for review, the department shall complete a technical review of the master plan and will act on the application in accordance with the procedures and time lines of Section 21.04.070 of this code for a Type II application. Approval of a master plan shall be subject to the appeal procedures set forth for such Type II decisions in Section 21.04.120 of this code.

F. Following approval of a master plan, development activity pursuant to each master plan shall be reviewed and approved subject to Kitsap County site development, building, and related permits only. No additional land use permitting will be required, provided such development is consistent with the approved master plan.

(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

### 17.415.650 Subdivision of areas subject to a master plan requirement

Properties subject to master planning may not be subdivided pursuant to Title 16 of this code until a master plan has been approved. Property owners subject to master planning, whom desire subdivision, may subdivide under Title 16 concurrently with a master plan approval process.

(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

### 17.415.700 Duration of master plan approval.

Section 21.04.110 of this code, "Timelines and Duration of Approval," shall not apply to master plans approved under this chapter. Master plans approved pursuant to this chapter will be valid for a period of ten years from the date of approval.

(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

### 17.415.750 Extensions of master plan approval.

Master plans approved under this chapter may be eligible for five-year extensions to be reviewed using the following process and criteria:

A. A request for extension must be filed in writing with the director no later than sixty days prior to the expiration of the approval period;

B. A request for extension will be processed as a Type II decision pursuant to Section 21.04.070 of this code:

C. The applicant must demonstrate tangible progress toward completion of approved master planned project;

D. The applicant must demonstrate that no significant changes in the technical components of the approved master plan are necessary to protect natural systems, or the public's health, safety and welfare; and

The director may approve, approve with conditions or deny the timely request for extension.

(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

### 17.415.800 Amendment of master plans.

Master plans may be amended or changed through a Type II application consistent with Section 21.04.070 of this code if the amendment meets the following criteria:

A. The applicant must have approval of all parties to the existing master plan whose ownership portion of the master planned area would be physically changed by the proposed amendment;

B. The amended master plan must conform to all requirements of this chapter;

C. The applicant must demonstrate to the director that there are no significant changes in conditions, which would render approval of the amendment contrary to the public health, safety or general welfare; and

D. The director shall approve the amendment if it conforms to the requirements of this chapter.

(Ord. 311 (2003) [Attachment 5 [§ 3 (part)]], 2003)

## Chapter 17.420

## CONDITIONAL USE PERMITS

**Sections:**



### 17.420.010 Purpose.

In certain zones, conditional uses may be permitted, subject to the granting of a conditional use permit. Because of their unusual characteristics or the special characteristics of the area in which they are to be located, conditional uses require special consideration so that they may be properly located with respect to the objectives of this title and their effect on surrounding properties.

(Ord. 216-1998 § 4 (part), 1998)

### 17.420.020 Hearing examiner authority.

The hearing examiner shall have the authority to approve, approve with conditions, disapprove, or revoke or modify conditional use permits, subject to the provisions of this section. Changes in use of site area, or alteration of structures or uses classified as conditional and existing prior to the effective date of this title shall conform to all regulations pertaining to conditional uses. In permitting a conditional use the hearing examiner may impose, in addition to regulations and standards expressly specified in this title, other conditions found necessary to protect the best interests of the surrounding property or neighborhood, or the county as a whole. These conditions may include requirements increasing the required lot size or yard dimensions, increasing street widths, controlling the location and number of vehicular access points to the property, increasing or decreasing the number of off-street parking or loading spaces required, limiting the number of signs, limiting the coverage or height of buildings or structures because of obstructions to view and reduction of light and air to adjacent property, limiting or prohibiting openings in sides of buildings or structures or requiring screening and landscaping where necessary to reduce noise and glare and maintain the property in a character in keeping with the surrounding area, and requirements under which any future enlargement or alteration of the use shall be reviewed by the county and new conditions imposed. Application for conditional use permits shall follow the requirements as outlined in Chapter 17.410.

(Ord. 216-1998 § 4 (part), 1998)

### 17.420.030 Application.

A property owner may make application for a conditional use permit which shall be made to the director in a manner prescribed by the county. Such application shall be accompanied by a site plan and other requirements as provided by Chapter 17.410, and following the pre-application meeting as provided by Chapter 17.405.

(Ord. 216-1998 § 4 (part), 1998)

### 17.420.040 Investigation and report.

The director shall make an investigation of the application and shall prepare a report